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The Montana Administrative Register (MAR or Register), a twice-monthly publication, has three sections. The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted. The Rule Adoption Section contains final rule notices which show any changes made since the proposal stage. All rule actions are effective the day after publication of the adoption notice unless otherwise specified in the final notice. The Interpretation Section contains the Attorney General's opinions and state declaratory rulings. Special notices and tables are found at the end of each Register.

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Secretary of State's Office, Administrative Rules Services, at (406) 438-6122.

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BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I through V; the amendment of ARM 10.55.601, 10.55.602, 10.55.603, 10.55.604, 10.55.605, 10.55.606, 10.55.701, 10.55.702, 10.55.703, 10.55.704, 10.55.705, 10.55.706, 10.55.707, 10.55.708, 10.55.709, 10.55.710, 10.55.712, 10.55.714, 10.55.715, 10.55.716, 10.55.717, 10.55.718, 10.55.721, 10.55.801, 10.55.802, 10.55.803, 10.55.804, 10.55.901, 10.55.902, 10.55.904, 10.55.905, 10.55.906, 10.55.907, 10.55.908, 10.55.1001, 10.55.1003, 10.55.1101, 10.55.1301, 10.55.1701, 10.55.1801, 10.55.1901, and 10.55.2101; the repeal of ARM 10.55.711 and 10.55.1302; and the transfer of ARM 10.55.607 pertaining to Standards of Accreditation	)	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION, AMENDMENT, REPEAL, AND TRANSFER

TO: All Concerned Persons

1. On October 31, 2022, at 9:00 a.m., the Board of Public Education will hold a public hearing in Room 152 of the Montana State Capitol Building, in Helena, Montana, to consider the proposed adoption, amendment, repeal, and transfer of the above-stated rules.

2. The Board of Public Education will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Board of Public Education no later than 5:00 p.m. on October 28, 2022, to advise us of the nature of the accommodation that you need. Please contact McCall Flynn, Executive Director, Board of Public Education, 46 N Last Chance Gulch, Suite 2B, P.O. Box 200601, Helena, MT 59620-0601; telephone (406) 444-0300; fax (406) 444-0847; or e-mail bpe@mt.gov.

3. The rules as proposed to be adopted provide as follows:

NEW RULE I CHARTER SCHOOL APPLICATION (1) A school district with the approval of an existing local board of trustees may apply to the Board of Public Education through the Superintendent of Public Instruction to form a charter school.

(a) A charter school must provide an education that meets or exceeds the requirements of the Montana Constitution, state law, and student performance standards.

(b) The Board of Public Education may only grant charters to publicly funded schools or programs under the supervision and control of an existing locally elected board of trustees in an existing school district.

(c) The procedure by which a school district may apply to create a charter school and by which the Board of Public Education may approve, deny, evaluate, and renew a charter school shall be identical to that outlined in ARM 10.55.604.

(d) To be proposed by an existing local board of trustees and approved by the Board of Public Education, a charter school shall, at a minimum, guarantee the following:

(i) school district governance and control;

(ii) unrestricted, open student access;

(iii) compliance with all health and safety laws;

(iv) teacher licensure and endorsement to the same extent as required or provided by state law or accreditation standards;

(v) employee collective bargaining to the same extent as required or provided by state law; and

(vi) a plan for consideration of input by community members and staff as to formation and implementation issues. Consideration of input may be identified by formation of advisory committees involving staff and/or community members, conduct of a properly noticed public meeting for purposes of comment on the formation or operation of the charter school, or any other reasonable means that result in an opportunity for input by staff and community members prior to a decision of significant interest to the public regarding the formation or operation of the charter school.

(e) Charter school applications must comply with statutory criteria, assurance standards pertaining to ARM Title 10, chapter 55, subchapter 6, General Provisions, ARM 10.55.601 through 10.55.606, ARM 10.57.114, ARM 10.55.719 through 10.55.721, or subchapter 8, Educational Opportunity, ARM 10.55.801 through [New Rule V], assurance standards pertaining to educator licensure or endorsement, student performance standards, and content standards as defined by the Board of Public Education and provided in guidance from the Superintendent of Public Instruction.

(f) A school district may discontinue an approved charter school at any time. If it does so, it shall promptly notify the Board of Public Education in writing.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-2-121, 20-7-101, MCA
IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-3-106, 20-7-101, MCA

NEW RULE II FAMILY AND COMMUNITY ENGAGEMENT (1) The local board of trustees shall implement a comprehensive family and community engagement plan that:

(a) is aligned to the district integrated action plan required in ARM 10.55.601;

(b) includes effective engagement practices that are linked to relational, developmental, collaborative, and interactive learning;

(c) recognizes that family and school staff have a shared responsibility in the learning of their child(ren) as evidenced by the following core beliefs:

(i) families have dreams for their children and want the best for them;

(ii) all families have the capacity to support their children's learning;

(iii) family and school staff are partners; and

(iv) the responsibility for cultivating and sustaining an inviting and inclusive climate rests primarily with school staff; and

(d) meets the following goals:

(i) families actively participate in the life of the school and are welcomed, valued, and connected to each other, to school staff, and to what students are learning and doing in class;

(ii) families and school staff engage in regular, two-way meaningful communication about student learning;

(iii) families and school staff continuously collaborate to support student learning and healthy development both at home and at school and have regular opportunities to strengthen their knowledge and skills to do so effectively;

(iv) families and school staff are empowered to advocate for children, to ensure that students are treated equitably and have access to learning opportunities that will support their success;

(v) families and school staff partner in decisions that affect children and families and together inform and influence policies, practices, and programs; and

(vi) families and school staff collaborate with members of the community to connect students, families, and staff to expand learning opportunities, community services, and civic participation.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-2-121, 20-7-101, MCA
IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-3-106, 20-7-101, MCA

NEW RULE III MENTORSHIP AND INDUCTION (1) The local board of trustees shall implement a mentorship and induction program as outlined in the integrated action plan described in ARM 10.55.601 that:

(a) is research-based to ensure inclusion of high-impact professional learning strategies;

(b) is implemented to assist initial licensed and incoming educators in meeting teaching standards embedded in the district evaluation framework outlined in [New Rule IV];

(c) supports initial licensed and incoming teachers' planning, implementation, and assessment of instruction aligned to the program area and content standards and content-specific learning progressions;

(d) supports initial licensed and incoming teachers to establish and maintain a positive classroom climate; and

(e) encourages continuous learning, reflection, and growth.

(2) The mentorship and induction program may include the following criteria:

(a) provide training for mentors through the Montana Teacher Learning Hub, professional organizations, or other professional development opportunities;

(b) prioritize mentor-mentee matches that are grade and subject-level aligned;

(c) focus on research-based instructional practice;
(d) engage with mentoring partners in professional collaboration; and
(e) establish effective coaching for learning methods.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-2-121, 20-7-101, MCA
IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-3-106, 20-7-101, MCA

NEW RULE IV EVALUATION (1) The local board of trustees shall ensure written evaluations of all regularly employed instructional personnel.

(2) The local board of trustees shall implement an evaluation component as outlined in the integrated action plan described in ARM 10.55.601.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-2-121, 20-7-101, MCA
IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-3-106, 20-7-101, MCA

NEW RULE V ENGLISH LEARNERS (1) Districts shall provide educational services to help English learners become proficient in English and meet state standards by creating high level language instruction programs, professional development, and family outreach.

(2) Each district shall comply with all federal and state laws and regulations addressing English learners.

(3) Each district shall identify students who are eligible for language assistance, provide a sound program of instruction, assess their English proficiency annually, and notify parents of their initial placement in, progress within, and exit from the language program.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-2-121, 20-7-101, MCA
IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-3-106, 20-7-101, MCA

4. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

10.55.601 ACCREDITATION STANDARDS: PROCEDURES (1) and (2) remain the same.

(3) To ensure a learner-centered system and establish a plan for continuous education improvement, the school district ~~and each of its~~ schools shall develop, implement, monitor, and evaluate ~~continuous~~ an integrated ~~school improvement plans~~ action plan and make the ~~plans~~ plan publicly ~~publically~~ available. ~~These plans shall be reviewed on a yearly basis to~~ To align with local context and needs, the district integrated action plan shall be developed every three years based on a comprehensive needs assessment with meaningful stakeholder input and feedback. The integrated action plan must be evaluated, and progress reviewed annually. The plan must clarify what specific steps must be taken to achieve the district graduate profile and reflect a continuous improvement process.

~~(a)~~ (4) Each plan shall include:

~~(i)~~ (a) a school district ~~level education~~ profile of a graduate as defined in ARM 10.55.602(22);

(b) the school district's and each of its school's identified area(s) of need based on an analysis of school level comprehensive needs assessment;

(c) the school district's and each of school's desired outcomes that align with the district graduate profile;

~~(ii)~~ (d) the ~~school district's~~ educational goals for the school district and each school within the district; ~~pursuant to the requirements of ARM 10.55.701;~~

(e) a description of the district and each school's evidence-based strategies, action steps, measures, success criteria, and evidence that are aligned with the graduate profile and will be implemented, monitored, and evaluated;

(f) a description of how the district and each of its schools will meet programmatic requirements of state and federal grants;

~~(iii)~~ (g) a description of planned progress toward implementing all content and program area standards, in accordance with the schedule in ARM 10.55.603;

~~(iv)~~ (h) a description of strategies for assessing student ~~progress toward meeting~~ growth and proficiency of all content standards and content-specific learning progressions, pursuant to the requirements of ARM 10.55.603 and ARM 10.56.101; ~~and~~

~~(v)~~ (i) ~~a~~ professional development, mentoring, induction, and evaluation components, in accordance with ARM 10.55.714, [New Rule III], and [New Rule IV];~~.~~

(j) a description of strategies for family and community engagement, in accordance with [New Rule II];

(k) a description of strategies to maintain and enhance a positive school climate, in accordance with ARM 10.55.801;

(l) a description of a learning model(s) aligned to the graduate profile; and

(m) a description of strategies for gifted and talented in accordance with ARM 10.55.804, special education in accordance with ARM 10.55.805, English learners in accordance with [New Rule V], and other populations with individual needs.

~~(b)~~ (5) The local board of trustees shall report and submit their adopted ~~continuous~~ integrated ~~school improvement~~ action plan ~~with~~ to the Superintendent of Public Instruction.

~~(c)~~ (6) The Superintendent of Public Instruction shall develop and implement procedures necessary to monitor and evaluate the effectiveness of the implementation of the ~~continuous~~ integrated ~~improvement~~ action plan of each school district and its schools.

~~(4)~~ (7) To ensure learner centered systems and continuous educational improvement, the Superintendent of Public Instruction shall provide guidance, resources, and evaluation to assist in the implementation of district ~~and school~~ integrated action plans to improve ~~teaching and~~ learning outcomes for all students.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-2-121, 20-7-101, MCA
IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-3-106, 20-7-101, MCA

10.55.602 DEFINITIONS For the purposes of this chapter, the following terms apply:

(1) remains the same.

(2) "Assessment" means the gathering, organizing, and evaluation of information about student learning progression, growth, and proficiency in order to

monitor and measure the effectiveness of the instructional program.

(3) remains the same.

(a) Subchapter 6, General Provisions, ARM 10.55.601 through ~~10.55.607~~ [New Rule I];

(b) Subchapter 7, School Leadership, ARM 10.55.701 through ~~10.55.719~~ [New Rule IV];

(c) Subchapter 8, ~~Academic Requirements~~ Educational Opportunity, ARM 10.55.801 through ~~10.55.805~~ [New Rule IV];

(d) Subchapter 9, ~~Educational Opportunity~~ Academic Requirements, ARM 10.55.901 through 10.55.910; and

(e) ~~Subchapter 10, Program Area Standards,~~ ARM 10.55.1001 through ~~10.55.1003~~ 10.55.2301.

(4) remains the same.

~~(5) "At-risk student" means any student who is affected by environmental conditions that negatively impact the student's educational performance or threaten a student's likelihood of promotion or graduation, as defined in 20-1-101(4), MCA.~~

(5) "Charter school" means a publicly funded school that may be exempt from an assurance standard or a section of assurance standards as defined in ARM 10.55.602(3). A charter school operates under the supervision and control of an existing locally elected board of trustees in an existing school district.

(6) "Class 6 specialist" means a person with a Class 6 specialist license in a nonteaching role of school psychologist or school counselor.

~~(6)~~(7) "Class 8 license" means an educator license as defined in ARM 10.57.102.

~~(7)~~(8) "Combined elementary-high school district" means an elementary district and a high school district, which are combined into a single school system for district administration purposes.

(9) "Community engagement" means the partnership between members of the community and schools that may share resources and volunteer to support student well-being and learning development.

(10) "Comprehensive needs assessment" means a process that is used to identify district and school area(s) of need, the root causes of identified gaps, set priorities, and inform an action plan for improvement.

(11) "Concurrent enrollment" means the district offers these courses during the school day and they are taught by district high school faculty who have been approved by the post-secondary institution to teach these college level courses. Students receive both high school and college credit for the completed course.

~~(8)~~(12) "Content standard" means what all students should know, understand, and be able to do in a specific content area.

~~(9)~~(13) "Corrective plan" means a systematic procedure and timeline for resolving deviations ~~from regular accreditation~~ when a school has an accredited with probation status.

~~(10)~~(14) "Deviation" means a citation of noncompliance with any given standard.

~~(11)~~(15) "Digital content provider" means an entity, organization, or individual registered pursuant to ARM 10.55.907 offering K-12 educational content for distance, online, and technology-delivered programs and courses.

~~(12)~~(16) "Distance learning" means instruction in which students and teachers are separated by time ~~and/or~~, location, or both with synchronous or asynchronous content, instruction, and communication between student and teacher. This instruction may consist of learning opportunities provided through online (Internet-based) and other emerging technologies.

(17) "Dual credit" means students receive both college credit and high school credit for courses taken from a postsecondary institution. Students may or may not be taking these courses during the school day. The college faculty member must have an appropriate license and endorsement in the subject taught or a Class 8 license.

~~(13)~~(18) "Dual enrollment~~/dual credit~~" means opportunities for ~~high school~~ students to be enrolled in high school and postsecondary courses at the same time. ~~There are three categories of such opportunities:~~

~~(a) "College credit only" means students receive college credit for courses taken from a postsecondary institution but do not receive high school credit. Students may or may not be taking these courses during the school day.~~

~~(b) "Dual credit" means students receive both college credit and high school credit for courses taken from a postsecondary institution. Students may or may not be taking these courses during the school day. The faculty member must have an appropriate K-12 license and endorsement in the subject taught or a Class 8 license.~~

~~(c) "Concurrent enrollment" means the district offers these courses during the school day and they are taught by district high school faculty who have been approved by the post-secondary institution to teach these college level courses. Students receive both high school and college credit for the completed course.~~

~~(14)~~(19) "Endorsement" means an official indication on a license of the subject area(s) ~~and/or~~, specialized program area(s), or both for which the holder of the license is authorized to practice in Montana accredited schools.

~~(15)~~(20) "Facilitator" means the individual assigned to monitor distance, online, and technology-delivered learning programs pursuant to ARM 10.55.907. The facilitator may be an instructional paraprofessional as long as there is a licensed teacher providing the instruction.

(21) "Family engagement" means a partnership with shared responsibility among families, educational staff, and community groups to promote each student's learning, well-being, and development of full educational potential during their entire K-12 experience.

(22) "Graduate profile" means a learner centered model(s) based on a shared vision of learner attributes that students should have when they graduate.

(23) "Graduation rate" means a calculation based on the four-year adjusted cohort graduation rate for all students and for each student group.

~~(16)~~(24) "Independent elementary school district" means a district organized for the purpose of providing public education for all or any combination of grades kindergarten through 8.

~~(17)~~(25) "Indian Education for All" means the constitutionally declared policy of this state to recognize the distinct and unique cultural ~~heritage~~ heritages of American Indians and to be committed in its educational goals to the preservation of their cultural ~~heritage~~ heritages. Implementation of these requirements ensures:

(a) every Montanan, Indian or non-Indian, is encouraged to learn about the distinct ~~heritage~~ heritages and contributions of Montana tribal groups and

governments in a culturally responsive manner; and

(b) every educational agency ~~shall~~ must work cooperatively with Montana tribes to provide means by which school personnel will gain an understanding of and appreciation for American Indian people.

~~(18)~~(26) "Instructional paraprofessional" means school or district personnel whose positions are instructional in nature and who work under the direct supervision of licensed school personnel. The supervising licensed school personnel are responsible for:

(a) the design, implementation, and assessment of learner progress; and

(b) the evaluation of the effectiveness of learning programs and related services for children.

(27) "Integrated action plan" means a district plan that ensures a learner centered system and continuous improvement that reflects local context and needs, is based on school level comprehensive needs assessment, incorporates stakeholder input and feedback, and aligns plans across required state and federal programs.

~~(19)~~(28) "Intensive assistance" means a required process for schools in ~~continuous or serious deficiency accreditation~~ accredited with probation status. Such schools have failed to develop or implement an approved corrective plan to remedy accreditation deviations within the designated timeline.

~~(20)~~(29) "Internship" as provided for in ARM ~~10.55.607~~ 10.57.114 means an agreement between a fully licensed Class 1, 2, or 3 educator, the school district, and a Montana accredited educator preparation program. Internships are permitted in endorsement areas approved by the Board of Public Education in ARM 10.57.412 and ~~10.57.413~~ 10.57.414 through 10.57.419.

~~(21)~~(30) "K-12 district" as defined in 20-6-701, MCA, means an elementary district, with the same district boundaries as a high school district, which has been attached to that high school district. The high school district remains an organized district and the elementary district is an inactive district pursuant to 20-6-101, MCA.

(31) "Learning model" means the learning experiences student engage in and teachers facilitate that are aligned to the desired attributes of a graduate profile.

~~(22)~~(32) "Learning progression" means the specific performance expectations in each content area ~~at each~~ and ~~grade-level~~ grade-band from kindergarten through grade 12.

~~(23)~~(33) "Licensure" means a certificate ~~certification~~ issued or applied for under 20-4-101, et seq., MCA. ~~of an educator/specialist as issued by the state of Montana, based on completion of an approved educator preparation program. Licensure indicates grade level(s), endorsement(s), and classification.~~

~~(24)~~(34) "Literacy" means constructing and validating knowledge in specific content areas which includes interpretation and learning with language, numeracy, and media ~~learning to read, write, speak, listen, and use language effectively~~.

(35) "Measure" means a way to assess the level of proficiency on a performance indicator aligned to the district graduate profile.

~~(25)~~(36) "Middle grades" means grades 4 through 9.

~~(26)~~(37) "Minimum aggregate hours" means the minimum hours of pupil instruction that must be conducted during the school fiscal year in accordance with 20-1-301, MCA and includes passing time between classes. Minimum aggregate

hours ~~does~~ do not include lunch time and periods of unstructured recess, as defined in 20-1-101, MCA.

~~(27)~~(38) "Minimum requirement" means groups of 10 or more students.

~~(28)~~(39) "Misassignment" means a licensed educator/specialist teaching outside their endorsed teaching area(s) ~~and/~~or level (elementary K-8 and secondary 5-12).

~~(29) "Nonaccredited status" means previously accredited school which failed to meet the requirements of intensive assistance and is out of compliance with the Board of Public Education standards of accreditation.~~

~~(30)~~(40) "Nonlicensed" means a person who does not hold a current Montana educator license, except for a person for whom an emergency authorization of employment has been issued under the provisions of 20-4-111, MCA.

(41) "Offsite instructional setting" means an instructional setting at a location, separate from a main school site, where a school district provides for the delivery of instruction to a student who is enrolled in the district.

~~(31)~~(42) "Online learning" means educational activity in which instruction and content are delivered primarily via the Internet and through emerging technologies. Online learning is a form of distance learning.

(43) "Personalized learning" means to:

(a) develop individualized pathways for career and postsecondary educational opportunities that honor individual interests, passions, strengths, needs, and culture;

(b) support the student through the development of relationships among teachers, family, peers, the business community, postsecondary education officials, and other community stakeholders;

(c) embed community-based, experiential, online, and work-based learning opportunities; and

(d) foster a learning environment that incorporates both face-to-face and virtual connections.

(44) "Postsecondary and workforce readiness" means the knowledge, skills, and dispositions that a student should attain prior to completing a high school program.

~~(32)~~(45) "Principal" means a person who holds a valid Montana Class 3 educator license with an applicable principal endorsement and who is employed by a district as a principal, or who is enrolled in a Board of Public Education approved principal internship program under ARM ~~10.55.607~~ 10.57.114.

(46) "Professional development" means adult learning that increases educator effectiveness and learning outcomes for all students.

(47) "Proficiency-based learning" means systems of instruction, assessment, and academic reporting that are based on students demonstrating that they have learned the knowledge and skills as outlined in the state content standards.

(48) "Proficient" means that a student demonstrated a level of knowledge and skills that are expected to be learned signaling that a student is well prepared to progress on the learning continuum aligned to the content standards, learning progressions, and necessary readiness skills.

~~(33)~~(49) "Program area standards" means the subject matter Montana

school districts are required to offer and the strategies and proven practices used to instruct. The program area standards include English language arts, arts, health ~~enhancement~~ and physical education, mathematics, science, social studies, career and technical education, technology integration, ~~workplace competencies,~~ computer science, library media and information literacy, world languages, and school counseling.

~~(34)~~(50) "Program delivery standards" means the conditions and practices school districts are required to provide ensuring that every student is afforded equal educational opportunities to learn, develop, and demonstrate achievement in content standards and content-specific ~~grade-level~~ grade-band learning progressions.

(51) "Pupil instruction" means the conduct of organized instruction of learning opportunities for pupils enrolled in public schools while under the supervision of a teacher.

~~(35)~~(52) "Pupil instruction day" means a school day when organized instruction is conducted with students under the supervision of a teacher.

~~(36)~~(53) "Pupil instruction-related (PIR) day" means days of teacher activities devoted to improving the quality of instruction. The activities may include, but are not limited to in-service training, attending state meetings of teacher organizations, and conducting parent conferences.

~~(37)~~(54) "School" means, for accreditation purposes, an educational program and grade assignments designated by the local board of trustees in one of the following categories:

(a) an elementary school, which offers any combination of kindergarten through eighth grade;

(b) a seventh and eighth grade school, which comprises the basic education program for grades 7 and 8 that may be funded at the high school rate pursuant to 20-9-396, MCA;

(c) a junior high school, which offers the basic education program for grades 7 through 9;

(d) a middle school, which offers education programs for grades 4 through 8 or any combination thereof; and

(e) a high school, which offers the educational programs for grades 9 through 12 or grades 10 through 12 when operating in conjunction with a junior high school.

~~(38)~~(55) "School administrator" means a person who is a part of the school's administrative or supervisory staff and who holds a Class 3 license and is appropriately endorsed, or who is enrolled in a Board of Public Education approved administrator internship program under ARM ~~10.55.607~~ 10.57.114.

~~(39)~~(56) "School district" means the territory, regardless of county boundaries, organized under the provisions of Title 20, MCA to provide public educational services under the jurisdiction of the local board of trustees. A high school district may encompass all or parts of the territory of one or more elementary districts. "School district" ~~shall~~ refers to all state-funded special purpose schools that are accredited under this chapter.

~~(40)~~(57) "School system" means the administrative unit of a district or combination of districts. In Montana, types of school systems are as follows:

(a) "combined elementary-high school district" means an elementary district and a high school district which are combined into a single school system for district

administration purposes.;

(b) "independent high school district" means a district organized for the purpose of providing public education for all or any combination of grades 9 through 12; and

(c) independent elementary school district" means a district organized for the purpose of providing public education for all or any combination of grades kindergarten through grade 8.

~~(41) "Specialist" means a person with a Class 6 Specialist license in a nonteaching role of school psychologist or school counselor.~~

(58) "Stakeholder engagement" means a measurable, inclusive, intentional, and ongoing process of communicating to, learning from, and partnering with stakeholders to best support continuous school improvement and learning outcomes for all students.

(59) "Stakeholders" means community members who may be involved and invested in districts, schools, programs, and outcomes for students. Stakeholders include students, families, educators, leaders, business and community leaders, taxpayers, and the many partners who support them.

~~(42)~~(60) "State accountability system" means federally mandated academic measures and Montana defined flex indicator(s) within the annual meaningful differentiation process ~~and the other state-defined indicators~~.

(61) "Student growth" means changes in student learning as measured from one point in time to another as determined by state or local measures, or both. The federal accountability system uses a growth model to demonstrate student learning across time as measured by statewide assessments.

~~(43)~~(62) "Student performance standards" means ~~minimum standards of a quality education, which measures~~ the measurement of student performance proficiency on annual state level summative assessments and graduation rates used to determine the accreditation status of a school.

~~(44)~~(63) "Superintendent" means a person who holds a valid Montana Class 3 educator license, with an applicable superintendent's endorsement ~~and who is employed by a district as a district superintendent~~, or who is enrolled in a Board of Public Education approved superintendent internship program under ARM ~~10.55.607~~ 10.57.114.

~~(45)~~(64) "Synchronous" means occurring at the same time. "Synchronous" refers to instruction and communication between participants (i.e., students and teachers) that occurs at the same time even though they may be in different physical locations. For example, instruction in which students and teachers are online at the same time so that a question can be immediately answered ~~(e.g., telephone calls, face-to-face meetings, physical classrooms, chat rooms, and videoconferencing)~~.

~~(46)~~(65) "Teacher" means a person, except a district superintendent, who holds a valid Montana educator license issued by the Superintendent of Public Instruction under the policies adopted by the Board of Public Education and who is employed by a district as a member of its instructional, supervisory, or administrative staff. This definition of a teacher includes a person for whom an emergency authorization of employment has been issued under the provisions of 20-4-111, MCA.

~~(47)~~(66) "Technology-delivered learning" means instruction and content

digitally delivered via ~~digital~~ technologies. ~~(e.g., online, CD-ROM, DVD-ROM, or learning experiences that involve primarily the use of computers).~~

~~(48)~~(67) "Variance to standard" means an alternate approach to meeting or exceeding the minimum standards.

(68) "Work-based learning" means sustained interactions with industry or community professionals in workplace settings, to the extent practicable, or simulated environments at an educational institution that foster in-depth, firsthand engagement with the tasks of a given career field, that are aligned to curriculum and instruction.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-2-121, 20-7-101, MCA
IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-3-106, 20-7-101, MCA

10.55.603 CURRICULUM AND ASSESSMENT (1) Local school districts shall ~~ensure their~~ develop and implement a proficiency-based learning model that includes curriculum ~~is~~ aligned to all content standards and ~~the~~ appropriate learning ~~progression~~ progressions ~~for each grade level~~.

(2) School districts shall ~~maintain~~ review, update, and align their learning programs ~~consistent with~~ following or after the state's schedule for revising standards.

(3) School districts shall assess ~~the progress of~~ all ~~students~~ students' progression, growth, and proficiency of ~~toward achieving~~ content standards and content-specific ~~grade-level~~ grade-band learning progressions in each program area as aligned with the district assessment plan in (5). The district shall use multiple measures ~~assessment results~~, including state-level achievement information obtained by administration of assessments pursuant to ARM 10.56.101 to examine the ~~educational~~ learning program and measure its effectiveness.

(a) The examination of program effectiveness using assessment results shall include current students and be supplemented with information about graduates and other students no longer in attendance~~.~~; and

(b) the information obtained shall be considered in curriculum and assessment development.

(4) For content standards in all program areas pursuant to the requirements of ARM 10.55.602, school districts shall:

(a) establish curriculum and assessment development processes as a cooperative effort of personnel licensed and endorsed in the program area and trustees, administrators, other teachers, students, specialists, ~~parents~~ families, community members, and, when appropriate, tribal representatives and state resource ~~people~~ staff;

(b) review curricula at least every five years or consistent with the state's standards revision schedule, and modify, as needed, to meet the ~~educational~~ goals of the ~~continuous school improvement~~ integrated action plan pursuant to ARM 10.55.601;

(c) review materials and resources necessary for implementation of the curriculum and assessment at least every five years, or consistent with the state's standards revision schedule, that are consistent with the goals of the ~~continuous school improvement~~ integrated action plan pursuant to ARM 10.55.601; and

(d) review curricula and instructional materials and resources to ensure the inclusion of the distinct and unique cultural ~~heritage~~ heritages and contemporary portrayal of American Indians.

(5) The school district shall develop and implement ~~its~~ an assessment plan that details progression, growth, and proficiency, promotes demonstrations of student learnings, and ~~used to measure~~ measures student progress ensuring alignment to the local curriculum in all program areas pursuant to ARM 10.56.101.

(a) The assessment plan shall be included in the ~~continuous school improvement~~ integrated action plan pursuant to ARM 10.55.601 and be in place within two years following the development of local curriculum.

(b) School districts shall use appropriate multiple measures and methods, including state-level achievement information obtained by administration of assessments pursuant to the requirements of ARM 10.56.101, to assess student ~~progress~~ growth and proficiency of ~~in achieving~~ content standards and content-specific ~~grade-level~~ grade-band learning progressions in all program areas.

(c) The Superintendent of Public Instruction shall develop criteria and procedures for the selection of appropriate multiple measures and methods to be used to assess student ~~progress in achieving~~ growth and proficiency of content standards and appropriate content-specific ~~grade-level~~ grade-band learning progressions in all program areas.

(d) remains the same.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-2-121, 20-7-101, MCA
IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-3-106, 20-7-101, MCA

10.55.604 VARIANCES TO STANDARDS (1) A local board of trustees may apply to the Board of Public Education through the Superintendent of Public Instruction to implement a variance to ~~a~~ an assurance standard or a section of assurance standards, excluding standards stating statutory criteria, standards pertaining to educator licensure or endorsement, and content standards as defined by the Board of Public Education and provided in guidance from the Superintendent of Public Instruction.

(a) In its application, the local board of trustees shall outline how and why its proposed variance would be workable, educationally sound, and designed to meet or exceed results under established standards and, where applicable, aligned with program standards under ARM 10.55.1101 through ~~10.55.1901~~ 10.55.2201.

(b) In its application, the school district shall provide evidence through official minutes of the board of trustees that local school community stakeholders were involved in the consideration and development of the proposed variance to an assurance standard or a section of assurance standards. Stakeholder groups include trustees, administrators, teachers, classified school staff, ~~parents~~ families, community members, and students as applicable. A district shall provide evidence it adopted its application for variance at an official, properly noticed meeting of its board of trustees.

(c) An application for variance to an assurance standard or a section of assurance standards ~~to take effect at the beginning of the academic year~~ is due in writing to the Superintendent of Public Instruction no later than the ~~first~~ second

Monday in ~~March~~ October for the current academic year. ~~An application for variance to standards to take effect the second semester of the academic year is due in writing to the Superintendent of Public Instruction no later than the first Monday in July.~~

(d) Upon receipt, the Superintendent of Public Instruction shall refer applications for variance to an assurance standard ~~standards~~ or a section of assurance standards to a pre-appointed review board. The Superintendent of Public Instruction shall facilitate and provide organizational support for the meetings of the review board.

(i) The review board shall consist of the following, appointed by the Superintendent of Public Instruction and approved by the Board of Public Education ~~from a list of qualifying individuals jointly endorsed by MEA-MFT, Montana Rural Education Association (MREA), Montana Small Schools Alliance (MSSA), School Administrators of Montana (SAM), and Montana School Boards Association (MTSBA)~~: one trustee, one district superintendent, one high school principal, one elementary principal, two high school teachers, ~~and~~ two elementary school teachers, one tribal council representative, and one family or community representative.

~~(ii) As needed, the review board shall seek advice from experts.~~

~~(A) The Superintendent of Public Instruction shall solicit a pool of experts from curriculum groups and educational associations to serve "on call" in an advisory capacity.~~

~~(B) The Superintendent of Public Instruction shall notify the review board of the pool participants with rationale and present them for review board approval.~~

~~(C) The review board shall notify the Superintendent of Public Instruction when and what type of experts are needed.~~

~~(D) The Superintendent of Public Instruction shall notify the appropriate pool of experts of this needed input and arrange for the pool member(s) to advise the committee.~~

~~(iii)~~(ii) The review board members shall serve five-year terms with no limit to the number of terms any one person may serve. Terms shall be staggered where half of all positions shall be filled every three years prior to the first meeting of the review board in the third year.

(e) The review board shall review all applications and use a uniform rubric, made available to districts in advance of applying to implement a variance to ~~a~~ an assurance standard or a section of assurance standards. The uniform rubric will ensure consistent and ~~high-quality~~ high-quality applications from school districts across Montana.

(f) through (h) remain the same.

(2) The Board of Public Education shall approve or deny proposed variances to an assurance standard or a section of assurance standards. If the board denies a proposed variance to an assurance standard or a section of assurance standards, it shall remit in writing to the applicant school district why it has done so.

(3) If the Board of Public Education approves a proposed variance to an assurance standard or a section of assurance standards, it shall initially do so for no more than two years pending ongoing review of the implementation by the Superintendent of Public Instruction.

(4) Following the second year of implementation of a variance to an

assurance standard or a section of assurance standards, the school district shall provide evidence to the Superintendent of Public Instruction that the methods selected by the district implement, meet, or exceed results that could have been achieved under established standards.

(5) through (7) remain the same.

(8) If the Superintendent of Public Instruction finds the variance to an assurance standard or a section of assurance standards is not working as intended or does not meet or exceed results that could be achieved under established standards, the superintendent shall recommend to the Board of Public Education that the variance be revoked.

(9) and (10) remain the same.

~~(11) A school district may apply to the Board of Public Education through the Superintendent of Public Instruction to create a charter school.~~

~~(a) A charter school must provide an education that meets or exceeds the requirements of the Montana Constitution, state law, and school accreditation standards.~~

~~(b) The Board of Public Education may only grant charters to publicly funded schools or programs under the supervision and control of a locally elected board of trustees in an existing school district.~~

~~(c) The procedure by which a school district may apply to create a charter school and by which the Board of Public Education may approve, deny, evaluate, and renew a charter school shall be identical to that outlined in ARM 10.55.604.~~

~~(d) To be proposed by a school district and approved by the Board of Public Education, a charter school shall, at a minimum, guarantee the following:~~

~~(i) school district governance and control;~~

~~(ii) unrestricted, open student access;~~

~~(iii) compliance with all health and safety laws;~~

~~(iv) teacher licensure and endorsement to the same extent as required or provided by state law or accreditation standards;~~

~~(v) employee collective bargaining to the same extent as required or provided by state law; and~~

~~(vi) a plan for consideration of input by community members and staff as to formation and implementation issues. Consideration of input may be identified by formation of advisory committees involving staff and/or community members, conduct of a properly noticed public meeting for purposes of comment on the formation or operation of the charter school, or any other reasonable means that result in an opportunity for input by staff and community members prior to a decision of significant interest to the public regarding the formation or operation of the charter school.~~

~~(e) A school district may discontinue an approved charter school at any time. If it does so, it shall promptly notify the Board of Public Education in writing.~~

~~(ii) unrestricted, open student access;~~

~~(iii) compliance with all health and safety laws;~~

~~(iv) teacher licensure and endorsement to the same extent as required or provided by state law or accreditation standards;~~

~~(v) employee collective bargaining to the same extent as required or provided by state law; and~~

~~(vi) a plan for consideration of input by community members and staff as to formation and implementation issues. Consideration of input may be identified by formation of advisory committees involving staff and/or community members, conduct of a properly noticed public meeting for purposes of comment on the formation or operation of the charter school, or any other reasonable means that result in an opportunity for input by staff and community members prior to a decision of significant interest to the public regarding the formation or operation of the charter school.~~

~~(e) A school district may discontinue an approved charter school at any time. If it does so, it shall promptly notify the Board of Public Education in writing.~~

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-2-121, 20-7-101, MCA
IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-3-106, 20-7-101, MCA

10.55.605 CATEGORIES OF ACCREDITATION (1) Accredited with distinction means the school has met the assurance standards, exceeded student performance standards as defined in ARM 10.55.606, and met the licensure endorsement requirements related to teaching assignments. A copy of the Accreditation Status Criteria Reference Guide must be made publicly available by the Superintendent of Public Instruction. Three consecutive years in the accredited with distinction status allows the local board of trustees to waive assurance standards for the school for three years.

~~(1)~~ (2) ~~Regular accreditation~~ Accredited means the school has met the assurance standards with minor and/or few deviations from the standards, ~~and~~ met or exceeded the student performance standards as defined and delineated in ARM 10.55.606, and met the Licensure Endorsement Requirements Related to Teaching Assignments~~,~~. ~~a copy of which may be found~~ A copy of the Accreditation Status Criteria Reference Guide must be made publicly available by the Superintendent of Public Instruction.
~~at: http://opi.mt.gov/Portals/182/Page%20Files/School%20Accreditation/Standards%20of%20Accreditation/Appendix%20Files/B/Endorsement%20Codes.pdf?ver=2019-09-04-130721-823.~~

~~(2) Regular with minor deviation accreditation means the school does not meet all the requirements of regular accreditation outlined in (1) and delineated in the Accreditation Status Criteria Reference Guide, a copy of which may be found at: http://opi.mt.gov/Portals/182/Page%20Files/School%20Accreditation/Standards%20of%20Accreditation/Appendix%20Files/A/Accreditation%20Status%20Criteria%20Reference%20Guide.pdf?ver=2019-06-13-113341-203.~~

~~(3) A school with regular accreditation with a deviation in student performance standards, as defined in ARM 10.55.606, or regular with minor deviations accreditation as defined in ARM 10.55.606(7), shall remedy the deviations within three years or will be reassigned to a lower category of accreditation.~~

~~(4)~~ (3) ~~Advice accreditation~~ Accredited on probation status means the school exhibits serious and/or numerous deviations from the assurance standards and/or does not meet the student performance standards as defined and delineated in ARM 10.55.606, and the Licensure Endorsement Requirements Related to Teaching

Assignments. A copy of the Accreditation Status Criteria Reference Guide must be made publicly available by the Superintendent of Public Instruction. For a district with a school accredited on probation status, the district administrator and the chair of the local board of trustees shall submit to the Superintendent of Public Instruction a corrective plan, including a systematic procedure and timeline for resolving the deviations noted. Schools identified as accredited on probation will be required to participate in an annual review of progress from the Office of Public Instruction. If a school has three consecutive years on probation, the school shall be placed into the intensive assistance process.

~~(5) Deficiency accreditation means the school is in advice status for two years, has not complied with the required corrective plan, and continues to have serious and/or numerous deviations, or has substantially increased the seriousness of deviations over the previous year.~~

~~(6) For a district with a school in advice or in deficiency status, the district administrator and the chair of the local board of trustees shall submit to the Superintendent of Public Instruction a corrective plan, including a systematic procedure and timeline for resolving the deviations noted.~~

~~(7) A school shall be immediately placed in deficiency status if:~~

~~(a) the school employs a teacher who does not have a Montana teaching license; or~~

~~(b) the school has a facility that creates an unhealthy environment with safety and health hazards.~~

~~(8) A school in deficiency status failing to comply with the required corrective plan shall be placed into the intensive assistance process as defined in the Accreditation Status Criteria Reference Guide, a copy of which may be found at: http://opi.mt.gov/Portals/182/Page%20Files/School%20Accreditation/Standards%20of%20Accreditation/Appendix%20Files/A/Accreditation%20Status%20Criteria%20Reference%20Guide.pdf?ver=2019-06-13-113341-203.~~

~~(9) Nonaccredited status means that a school in deficiency status fails to meet the requirements of intensive assistance and is out of compliance with the Board of Public Education standards of accreditation.~~

~~(10)~~ (4) A school seeking initial accreditation or reinstatement of accreditation shall meet the requirements of ~~regular~~ accreditation outlined in ~~(1)~~ (2). This process shall include an on-site review from the Office of Public Instruction.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-2-121, 20-7-101, MCA
IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-3-106, 20-7-101, MCA

10.55.606 ACCREDITATION PROCESS (1) remains the same.

(2) Assurance standards are comprised of the following subchapters in ARM Title 10, chapter 55:

(a) Subchapter 6, General Provisions, ARM 10.55.601 through ~~10.55.607~~ [New Rule I];

(b) Subchapter 7, School Leadership, ARM 10.55.701 through ~~10.55.719~~ [New Rule IV];

(c) Subchapter 8, ~~Academic Requirements~~ Educational Opportunity, ARM 10.55.801 through ~~10.55.805~~ [New Rule V];

(d) Subchapter 9, ~~Educational Opportunity~~ Academic Requirements, ARM 10.55.901 through ~~10.55.910~~ 10.55.911; and

(e) ~~Subchapter 10, Program Area Standards,~~ ARM 10.55.1001 through ~~10.55.1003~~ 10.55.2301.

(3) Student performance standards are comprised of measures required under ARM 10.56.101(3) and other measures described in the state accountability system, defined in ARM 10.55.602, recommended by the state superintendent and approved by the Board of Public Education ~~(BPE)~~.

(a) ~~BPE~~ The Board of Public Education shall annually review the minimum requirement, defined in ARM 10.55.602, for reporting valid and reliable student group results and to protect student privacy based on the recommendation of the State Superintendent of Public Instruction.

(b) The State Superintendent of Public Instruction shall recommend to the ~~BPE~~ Board of Public Education modifications to the student performance standards after consultation with representative stakeholders.

(4) and (5) remain the same.

(6) A school shall be designated accredited with distinction by using the combined results of accredited status for assurance standards and distinguished status for student performance results, where 80% of students are proficient or advanced and/or obtain an 80% or higher graduation rate.

~~(6) A school shall be designated regular accreditation status by using the combined results of the assurance standards and student performance standards as follows:~~

~~(a) Regular status for assurance standards and regular status for student performance standards;~~

~~(b) Regular status for assurance standards and regular with minor deviation for student performance standards; or~~

~~(c) Regular with minor deviation for assurance standards and regular status for student performance standards.~~

(7) A school shall be designated ~~regular with minor deviation~~ accredited status by using the combined results of both assurance standards and student performance standards in ~~regular with minor deviation status~~ accredited status, or as stated in ARM 10.55.605.

(8) A school shall be designated in ~~advice~~ accredited on probation status by using the combined results of the assurance standards and student performance standards in accredited with probation for either set of standards, or as stated in ARM 10.55.605.

~~(9) A school shall be designated deficiency status by using the combined results of assurance standards and student performance standards in deficiency in either set of standards, or as stated in ARM 10.55.605.~~

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-2-121, 20-7-101, MCA
IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-3-106, 20-7-101, MCA

10.55.701 BOARD OF TRUSTEES (1) remains the same.

(2) Each school district shall make available to the staff and public:

(a) ~~goals that reflect the district's strategic plan of education~~ an integrated

action plan that includes a graduate profile as outlined in ARM 10.55.601;

(b) sequential K-12 curriculum for each program area that aligns to the content standards, ~~specific grade-level~~ grade-band learning progressions, and program area standards;

(c) policies establishing student assessment procedures that ensure evaluation of the district's curriculum and student learning. These procedures shall specify how and when data are to be collected, analyzed, and reported; and

(d) ~~policies that delineate~~ descriptions of the roles and responsibilities of the local board of trustees, superintendent, and personnel employed by the school district. ~~The local board of trustees shall review these policies on a regular basis;~~

~~(e) policy on student, parent, and school employee due process rights;~~

~~(f) policies addressing bullying, hazing, intimidation, and harassment of students and meeting the requirements in ARM 10.55.719;~~

~~(g) an equity policy;~~

~~(h) a transfer policy for determining the appropriate placement of incoming students;~~

~~(i) an academic freedom policy;~~

~~(j) a materials selection policy, including a challenge procedure, for all curricular and support materials;~~

~~(k) a copyright policy;~~

~~(l) a policy that defines the use of school facilities and resources;~~

~~(m) comprehensive family engagement policy aligned to meet the following goals:~~

~~(i) families actively participate in the life of the school and feel welcomed, valued, and connected to each other, to school staff, and to what students are learning and doing in class;~~

~~(ii) families and school staff engage in regular, two-way meaningful communication about student learning;~~

~~(iii) families and school staff continuously collaborate to support student learning and healthy development both at home and at school and have regular opportunities to strengthen their knowledge and skills to do so effectively;~~

~~(iv) families are empowered to be advocates for their own and other children, to ensure that students are treated equitably and have access to learning opportunities that will support their success;~~

~~(v) families and school staff partner in decisions that affect children and families and together inform, influence, and create policies, practices, and programs; and~~

~~(vi) families and school staff collaborate with members of the community to connect students, families, and staff to expand learning opportunities, community services, and civic participation;~~

~~(n) a policy incorporating the distinct and unique cultural heritage of American Indians, ensuring integration of the history and contemporary portrayals of Indians, and that is aligned with district goals;~~

~~(o) a policy addressing distance, online, and technology-delivered learning as defined in ARM 10.55.602;~~

~~(p) a policy, procedure, or plan addressing suicide prevention and response as outlined in ARM 10.55.720;~~

~~(q) a policy addressing hazard and emergency plans as outlined in ARM 10.55.721;~~

~~(r) a policy that defines a significant writing program; and~~

~~(s) a policy that addresses student health issues that arise in the school setting.~~

~~(3) The local board of trustees shall have valid, written contracts with all regularly employed licensed administrative, supervisory, and teaching personnel.~~

~~(4) The local board of trustees shall have written policies and procedures for regular and periodic evaluation of all regularly employed personnel. The individual evaluated shall have access to a copy of the evaluation instrument, the opportunity to respond in writing to the completed evaluation, and access to his or her files. Personnel files shall be confidential.~~

~~(a) The evaluation system used by a school district for licensed staff shall, at a minimum:~~

~~(i) be conducted on at least an annual basis with regard to nontenure staff and according to a regular schedule adopted by the district for all tenure staff;~~

~~(ii) be aligned with applicable district goals, standards of the Board of Public Education, and the district's mentorship and induction program required under ARM 10.55.701(5)(b);~~

~~(iii) identify what skill sets are to be evaluated~~

~~(iv) include both formative and summative elements; and~~

~~(v) include an assessment of the educator's effectiveness in supporting every student in meeting rigorous learning goals through the performance of the educator's duties.~~

~~(b) The Superintendent of Public Instruction shall develop and publish model evaluation instruments that comply with this rule in collaboration with the MEA-MFT, Montana Rural Education Association, Montana School Boards Association, School Administrators of Montana, and Montana Small School Alliance. A school district adopting and using one of the model instruments shall be construed to have complied with this rule, though use of one of the models shall not be required provided that the district's evaluation instrument and process substantially conforms to the requirements set forth in this section.~~

~~(5)~~(3) The local board of trustees shall~~:~~

~~(a)~~ establish conditions that contribute to a positive school climate which:

~~(i)~~ (a) ~~keep parents/guardians up to date on students' progress;~~ implement family and community engagement strategies as found in [New Rule II]; and

~~(ii)~~ (b) engage in a continuous school improvement process~~; and~~.

~~(b) establish mentoring and induction programs to assist licensed staff in meeting teaching standards as defined in ARM 10.55.701(4)(a) and (b).~~

(4) The local board of trustees shall develop, with stakeholder input, a district mission and vision that aligns to the district graduate profile.

(5) The local board of trustees with meaningful stakeholder involvement shall establish and implement policies that:

(a) provide for the safety and well-being of all students;

(b) emphasize student learning and each student's growth;

(c) allow for personalized and proficiency-based learning models; and

(d) establish other policies for the effective operation of the school district.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-2-121, 20-7-101, MCA
IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-3-106, 20-7-101, MCA

10.55.702 LICENSURE AND DUTIES OF DISTRICT ADMINISTRATOR – DISTRICT SUPERINTENDENT (1) and (1)(a) remain the same.

(b) considered appropriately assigned if the superintendent is enrolled in an internship program as defined in ARM 10.55.602 and meets the requirements of ARM ~~10.55.607~~ 10.57.114.

(2) and (3) remain the same.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-2-121, 20-7-101, MCA
IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-3-106, 20-7-101, MCA

10.55.703 LICENSURE AND DUTIES OF SCHOOL PRINCIPAL (1) and (1)(a) remain the same.

(b) be considered appropriately assigned if the principal is enrolled in an internship as defined in ARM 10.55.602 and meets the requirements of ARM ~~10.55.607~~ 10.57.114.

(2) remains the same.

(3) The principal shall carry out the district's policies and procedures, provide instructional leadership that allows for personalized and proficiency-based learning models, engage in strategic planning and school improvement, intentionally engage families and community members, ensure a positive school climate, and be responsible for the effective day-to-day operation of the school, including the management of finances, materials, and human resources to maximize student learning outcomes.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-2-121, 20-7-101, MCA
IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-3-106, 20-7-101, MCA

10.55.704 ADMINISTRATIVE PERSONNEL: ASSIGNMENT OF DISTRICT SUPERINTENDENTS (1) The assignment of licensed superintendents for all configurations of school systems shall be determined by the local board of trustees, who recognize that in order to have a quality school system, leadership and leadership stability matter. The employment, assignment, functions, and duties of superintendents must comply with 20-3-207, 20-4-401, 20-4-402, MCA. ~~based upon full-time equivalency (FTE) and shall be assigned as follows:~~ The local board of trustees shall hire a district superintendent when:

(a) It operates a County High School, except the trustees may employ a Class 3 holder with a district superintendent endorsement as the county high school principal in lieu of a superintendent.

(b) The trustees of any high school district that operates under a separate board of trustees due to alternate methods of electing members of the high school board of trustees and the trustees of the elementary district where its high school building is located shall jointly employ and appoint a district superintendent.

(c) A joint board of trustees has been formed by a county high school and the elementary district where the county high school is located, the joint board shall jointly employ and appoint a district superintendent.

(d) The trustees of any other district may employ and appoint a district superintendent or when practicable seek the services of the county school superintendent as outlined in 20-3-207, MCA, to assist with the supervision or other support requirements identified by the county superintendent (e.g., employ a principal, subcontract with a licensed superintendent).

(2) When a district superintendent is employed, the trustees shall enter into a minimum of a one-year negotiated contract with the superintendent but can negotiate up to three years. Renewal of contracts must comply with 20-4-401, MCA.

(3) Based on the enrollment of a school system and the scope, functions, and duties of the superintendent, the district superintendent is encouraged to recommend to the local board of trustees the assignment of additional staff (e.g., assistant superintendents, coordinators, directors, supervisors) to assist with the operation of the school district to provide a quality education that results in actualized learning outcomes and the safety and wellness of students.

~~(a) School systems with 14 or fewer FTE licensed staff and without a licensed superintendent employed may use a supervising teacher and the services of the office of the county superintendent to satisfy administrator requirements;~~

~~(b) School systems with more than 14 and fewer than 18 FTE licensed staff shall employ a part-time, at a minimum of .10 FTE, licensed superintendent. One individual may serve as both superintendent and principal as defined in ARM 10.55.705(2)(a) or (2)(b);~~

~~(c) School systems with more than 18 and fewer than 31 FTE licensed staff shall employ a half-time (.50 FTE) licensed superintendent. One administrator may serve as both superintendent and principal as defined in ARM 10.55.705(2)(a) or (2)(b);~~

~~(d) school systems with 31 or more FTE licensed staff shall employ a full-time (1.0 FTE) licensed superintendent who shall devote full time to administration and supervision not to exceed a total assignment of 1.0 FTE.~~

~~(e) No individual superintendent assigned pursuant to the ratios in (1) may be assigned as more than 1.0 FTE.~~

~~(2)~~ (4) School systems with 100 or more full-time equivalency (FTE) ~~FTE~~ licensed staff shall employ a full-time curriculum coordinator to supervise the educational program and alignment of standards, assessment, curriculum, instruction, and instructional materials. The curriculum coordinator shall hold a Class 3 administrative license. Those districts with fewer than 100 FTE licensed staff and no full-time curriculum coordinator shall employ the services of a consortium, multidistrict collaborative, or interlocal cooperative, or a part-time, designated curriculum coordinator.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-2-121, 20-7-101, MCA
IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-3-106, 20-7-101, MCA

10.55.705 ADMINISTRATIVE PERSONNEL: ASSIGNMENT OF SCHOOL ADMINISTRATORS/PRINCIPALS (1) ~~School systems with nine or fewer FTE~~

~~licensed staff and without a licensed superintendent may use a supervising teacher and the services of the office of the county superintendent to satisfy principal requirements.~~ The assignment of licensed school administrators/principals for all configurations of school systems shall be recommended by the district superintendent or county superintendent to the local board of trustees based on the scope, functions, and duties of the administrator/principal outlined in ARM 10.55.703, who recognize that in order to have a quality school system, leadership and leadership stability matter. Further, it is recognized that principals and assistant principals are the school leaders whose impact is second only to the classroom teacher in quality student learning outcomes and the safety and well-being of students.

(a) The local board of trustees may employ a principal/superintendent combination to lead their school districts.

(b) The local board of trustees shall ensure that administrator/principal duties shall be met through the employment of a superintendent/principal or, where practicable, seek the needed services of the county superintendent in a school district with fewer than 125 students.

(c) A school district must assign a licensed school administrator/principal full or partial FTE based on scope, function, and responsibilities for a school district with an enrollment of 125 students or more.

(2) ~~The assignment of licensed principals shall be based upon student enrollment and prorated as applicable. Principal assignments are as follows:~~

~~(a) 0.25 FTE licensed principal shall be assigned to schools with enrollments of 125 to fewer than 175 students;~~

~~(b) 0.50 FTE licensed principal shall be assigned to schools with enrollments of 175 to fewer than 250 students;~~

~~(c) 1.0 FTE licensed principal shall be assigned to schools with enrollments of 250 to fewer than 550 students;~~

~~(d) 2 FTE licensed principals shall be assigned to schools with enrollments of 550 to fewer than 1050 students;~~

~~(e) 3 FTE licensed principals shall be assigned to schools with enrollments of 1050 to fewer than 1550 students;~~

~~(f) 4 FTE licensed principals shall be assigned to schools with enrollments of 1550 to fewer than 2050 students;~~

~~(g) 5 FTE licensed principals shall be assigned to schools with enrollments of 2050 or more students.~~ Dependent on the student enrollment of the school and the scope, function, and responsibility of a principal/administrator, local boards of trustees are encouraged to set staffing levels of principals/administrators that will provide a quality education that results in learning outcomes and supports the safety and well-being of students.

(a) The local board of trustees may employ and assign a principal/superintendent combination to lead their school districts.

(b) The local board of trustees may assign a supervising teacher and/or county superintendent to fill the duties of the principal in schools.

(c) The local board of trustees may assign a licensed school administrator/principal at a partial or full-time equivalency.

(3) ~~No individual principal assigned pursuant to the ratios in (2) may be~~

~~assigned as more than 1.0 FTE.~~ Additional administrator/principal FTE may be recommended by the district or county superintendent to the local board of trustees for consideration at any time during the school year.

~~(4) In a school that requires two or more FTE administrators/principals, at least one individual shall be appropriately endorsed as principal. At least a second administrator shall have an administrative endorsement(s) at the appropriate level(s) and in the area(s) that accurately reflects the administrator's supervisory responsibilities. For example, a school may assign properly licensed and endorsed curriculum coordinators to supervise the appropriate instructional programs. No individual administrator assigned pursuant to the ratios in ARM 10.55.705(2) may be assigned as more than 1.0 FTE.~~

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-2-121, 20-7-101, MCA
IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-3-106, 20-7-101, MCA

10.55.706 TEACHER INVOLVEMENT (1) Teachers should use their professional judgment and measures of student growth and proficiency to provide engaging and highly effective ~~deliver high-quality~~ instruction to all students based on individual need.

(2) remains the same.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-2-121, 20-7-101, MCA
IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-3-106, 20-7-101, MCA

10.55.707 TEACHER AND SPECIALIST LICENSURE (1) and (1)(a) remain the same.

(b) considered appropriately assigned if enrolled in an internship as defined in ARM 10.55.602 and meet the requirements of ARM ~~10.55.607~~ 10.57.114.

(2) remains the same.

(3) School psychologists shall be licensed under ARM 10.57.432(1) or 10.57.433 and 10.57.434, or considered appropriately assigned if they are enrolled in an internship as defined in ARM 10.55.602 and meet the requirements of ARM ~~10.55.607~~ 10.57.114.

(4) and (4)(a) remain the same.

(b) considered appropriately assigned if they hold a Class 1 or 2 license and are enrolled in an internship as defined in ARM 10.55.602 and meet the requirements of ARM ~~10.55.607~~ 10.57.114.

(5) remains the same.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-2-121, 20-7-101, MCA
IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-3-106, 20-7-101, MCA

10.55.708 TEACHING ASSIGNMENTS (1) Teachers shall be assigned at the levels and in the subjects for which they are licensed and endorsed, unless they are enrolled in an internship as defined in ARM 10.55.602 and meet the requirements of ARM ~~10.55.607~~ 10.57.114.

(2) Teachers assigned in grade 5 or 6 in the departmentalized classroom or

middle school, who hold a 5-12 secondary license, must be endorsed in the subjects they are teaching. ~~A 5-12 license will not cover a grade 5 or 6 assignment in a self-contained K-8 classroom~~.

(3) ~~Clarifications of teaching assignments in grades 5 through 12 departmentalized settings are published in the Licensure Endorsement Requirements Related to Teaching Assignments, a copy of which may be found at: http://www.opi.mt.gov/pdf/Accred/Ch55/Appendices.pdf.~~

~~(4)~~ Licensure at the elementary level entitles the holder to teach in grades K through 8.

~~(5) No teacher shall have more than 28 hours of assigned student responsibility per week except for one-, two-, and three-teacher schools.~~

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-2-121, 20-7-101, MCA
IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-3-106, 20-7-101, MCA

10.55.709 LIBRARY MEDIA SERVICES, K-12 (1) Each school must have a library media and literacy information program aligned to the content standards in ARM 10.53.1201 and the program standards in ARM 10.55.1801 that results in student learning outcomes for media and information literacy. ~~The school library shall be housed in a central location, and each shall have a licensed and endorsed library media specialist at the following ratio:~~

~~(a) .5 FTE for schools with 126-250 students;~~

~~(b) 1 FTE for schools with 251-500 students;~~

~~(c) 1.5 FTE for schools with 501-1000 students;~~

~~(d) 2 FTE for schools with 1001-1500 students;~~

~~(e) 2.5 FTE for schools with 1501-2000 students;~~

~~(f) 3 FTE for schools with 2001 or more students.~~

(2) ~~Schools of fewer than 126 students shall employ or contract with a licensed and endorsed school library media specialist.~~ Based on the needs of the district, in concert with national and state program standards, the superintendent must recommend to the local board of trustees the assignment of library media staff to provide library media and information literacy services that result in the knowledge, skills, and dispositions students need by:

(a) employing licensed and endorsed library media specialist(s); or

(b) contracting with a licensed and endorsed school library media specialist; or

(c) utilizing a consortium, multidistrict agreement, interlocal cooperative; or

(d) utilizing any other cooperative method that is authorized to secure these services.

~~(3) If a district has fewer than 126 students, the district may utilize a consortium, multidistrict agreement, or interlocal cooperative to secure these services.~~

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-2-121, 20-7-101, MCA
IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-3-106, 20-7-101, MCA

10.55.710 ASSIGNMENT OF SCHOOL COUNSELING STAFF (1) ~~A~~

~~minimum equivalent of one full-time counselor for each 400 elementary (K-8) students shall be provided. The counselor/student ratio shall be prorated.~~ Each school must have a school counseling program for K-12 students aligned to delivery standards in ARM 10.55.1901 and national counselor and student standards. The school system will assess the need for student supports that result in the knowledge, skills, and dispositions students need to:

(a) address mental health, safety, and well-being;

(b) achieve academic success and college and career readiness; and

(c) develop the mindsets and behaviors as identified in the national school counseling standards.

(2) ~~A minimum equivalent of one full-time counselor for each 400 high school students (including grades 7 and 8 if high school funding is received) shall be provided. The counselor/student ratio shall be prorated.~~ Based on the needs of the district in concert with national and state standards, the superintendent must recommend to the local board of trustees the assignment of counseling staff based on the capacity of individual counselors to provide school counseling programming and services by:

(a) employing licensed school counselor(s) or Class 6 specialist(s); or

(b) contracting licensed school counselor(s) or Class 6 specialist(s); or

(c) utilizing a consortium, multidistrict agreement, or interlocal cooperative to secure these services; or

(d) utilizing any other cooperative method that is authorized to secure these services.

(3) ~~Districts with fewer than 126 students may employ or contract with a licensed, endorsed school counselor or Class 6 specialist or utilize a consortium, multidistrict agreement, or interlocal cooperative to secure these services.~~ Based on the student need and school population(s), the district superintendent must recommend to the local board of trustees the assignment of additional degreed, licensed, or credentialed staff (e.g., school counselors, school psychologists, career advisors, licensed clinical social workers, licensed professional counselors, behaviorists, other mental health professionals, and/or other resources) that supports the staffing levels based on evidence-based research and national counseling standards.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-2-121, 20-7-101, MCA
IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-3-106, 20-7-101, MCA

10.55.712 CLASS SIZE: ELEMENTARY (1) through (4) remain the same.

(5) The school district must provide additional human resources when exceeding maximum class sizes. ~~Instructional aides are mandatory when class size or teacher load exceed the standards. An instructional aide shall be assigned a minimum of 1 1/2 hours per day, per student overload up to six hours.~~

(6) An overload of six or more ~~five~~ students per classroom is not allowed ~~considered excessive~~.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-2-121, 20-7-101, MCA
IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-3-106, 20-7-101, MCA

10.55.714 PROFESSIONAL DEVELOPMENT (1) Professional development:

(a) shall be aligned with the district graduate profile and educational goals outlined in the district integrated action plan described in ARM 10.55.601 ~~and objectives~~;

(b) shall be provided to address safety, well-being, and mental health of students;

~~(b)~~(c) focuses on teachers as central to student learning and includes all other members of the school community;

~~(c)~~(d) focuses on individual, collegial, and organizational learning, reflection, and growth ~~improvement~~;

~~(d)~~(e) respects and nurtures the intellectual and leadership capacity of teachers, principals, and others in the school community by incorporating active learning and adult learning theory;

~~(e)~~(f) reflects ~~proven~~ research and demonstrates models of effective practice in teaching, learning, and leadership;

~~(f)~~(g) enables teachers to develop further experience in subject content, teaching strategies, uses of technologies, and other essential elements in teaching to high standards;

~~(g)~~(h) ~~promotes continuous inquiry and improvement embedded in daily life of schools~~ offers opportunities for feedback and reflection;

~~(h)~~(i) is ongoing and sustained;

~~(i)~~(j) is planned collaboratively by those who will participate in and facilitate that development;

~~(j)~~(k) requires substantial time, ~~and~~ other resources, and where practical provides coaching and expert support;

(l) is job-embedded to encourage teachers to meet, share, collaborate, and grow their practice;

~~(k)~~(m) is driven by a coherent long-term plan; and

~~(l)~~(n) is evaluated on the impact of professional development on teacher effectiveness and student learning, and the results of this assessment guides subsequent professional development.

(2) remains the same.

(3) The local board of trustees shall establish an advisory committee to evaluate the school district's current school year professional development plan; and develop and recommend a plan for the subsequent school year, which is a required component of the integrated action plan outlined in ARM 10.55.601.

(a) The advisory committee shall include, but not be limited to, trustees, administrators, and teachers. A majority of the committee shall be teachers.

(b) Each school year the local board of trustees shall adopt a professional development plan embedded in the district integrated action plan for the subsequent school year based on the recommendation of the advisory committee.

(c) through (h) remain the same.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-2-121, 20-7-101, MCA
IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-3-106, 20-7-101, MCA

10.55.715 INSTRUCTIONAL PARAPROFESSIONALS: QUALIFICATIONS AND SUPERVISION (1) remains the same.

~~(b)~~ (a) Instructional paraprofessionals assigned to assist students with special education needs shall be under the supervision of the teacher or other professional designated as primarily responsible for instructional planning for the student. The designated professional has the responsibility to provide regularly scheduled communication and direction to the instructional paraprofessional and not to delegate any activity to the instructional paraprofessional that requires professional skill, knowledge, and judgment.

~~(c)~~ (b) Instructional paraprofessionals assigned to assist students in gaining specialized knowledge not generally available from a properly endorsed teacher shall be supervised by a teacher licensed at the proper level. The supervising teacher is responsible for instruction and assessment of students and shall not be simultaneously assigned to another teaching duty or preparation time.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, MCA
IMP: Mont. Const. Art. X, sec. 9, 20-2-121, MCA

10.55.716 SUBSTITUTE TEACHERS (1) through (4)(b) remain the same.

(c) ~~The district may accept the report of a previous fingerprint-based background check if it is submitted by a Montana university or college for a student currently or formerly enrolled in an accredited Montana professional educator program or from a public or nonpublic state-accredited school that previously employed the substitute. The report shall not be accepted if it was completed more than two years prior to the date of submission.~~

~~(d)~~ The district shall consider the information obtained from the results of the fingerprint-based background check under the provisions of Title 37, chapter 1, part 2, MCA, governing the licensure of criminal offenders and under 20-4-110, MCA. Conviction, including conviction following a plea of nolo contendere, a conviction in which the sentence is suspended or deferred, or any other adjudication treated by the court as a conviction, may be considered by the district as grounds for removal from the classroom if the conviction was for a sexual offense, theft, or any other crime meeting the criteria of Title 37, chapter 1, part 2, MCA.

~~(5) Sections (2), (3), and (4) may be waived by the local board of trustees in whole or in part, if the nonlicensed substitute has previous teaching or substitute teaching experience in a Montana-accredited public school prior to November 28, 2002 and who has continued to substitute yearly thereafter.~~

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-2-121, 20-4-102, 20-7-101, MCA
IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-3-106, 20-4-102, 20-7-101, MCA

10.55.717 ASSIGNMENT OF PERSONS PROVIDING INSTRUCTION TO BRAILLE STUDENTS (1) No licensed or classified employee of a school district, cooperative, or any contracted service provider shall be assigned to provide instruction of Braille to a student or produce Braille materials who has not

demonstrated competency in "contracted" (grade two) standard literary Braille code by:

(a) ~~successful completion of the National Literary Braille Competency Test~~ successful completion of a program, for teaching visually impaired students, from an approved educator preparation program as defined in ARM 10.57.102; ~~or~~

(b) successful completion of the ~~Braille competency test developed by Portland State University (Braille Literacy Usage Exam)~~ National Certification in Unified English Braille Test and maintenance of that certificate; ~~or~~

(c) successful completion of ~~Library of Congress transcriber's certificate~~ the Unified English Braille Exam (Washington State School for the Blind) and ongoing maintenance; ~~or~~

(d) ~~successful completion of a program, for teaching visually impaired students, from an accredited college or university~~ successful completion of the Literary Braille Transcribing Course available through the National Federation of the Blind.

(2) The employing agency (school district and/or cooperative) is responsible for:

(a) monitoring appropriate assignment of personnel under (1);

(b) assuring personnel working towards certification are making adequate gains in their coursework; and

(c) assuring maintenance of certification.

(3) through (6) remain the same.

(7) If a paraprofessional, who has not successfully met the requirements found in (1), is assigned to work with a student who has a visual impairment, the paraprofessional will be supervised by the ~~district's~~ designated special education teacher in collaboration with a teacher of the visually impaired who holds a credential from an ~~accredited university~~ approved educator preparation program as defined in ARM 10.57.102. In addition, the assigned paraprofessional and the school district shall meet the requirements contained in (1) within two years of the date a student with a visual impairment has been identified as in need of Braille instruction and/or materials.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-2-121, 20-7-101, MCA
IMP: Mont. Const. Art. X, sec. 9, ~~20-1-121,~~ 20-2-121, 20-3-106, 20-7-101, 20-7-475, MCA

10.55.718 ASSIGNMENT OF PERSONS PROVIDING SIGN LANGUAGE INTERPRETING FOR STUDENTS WHO ARE DEAF OR HARD OF HEARING

(1) through (4) remain the same.

(5) Employees who have met the requirements in (1) and who seek to remain eligible to work as educational sign language interpreters are responsible for documenting a completion of 12 clock hours of professional development and/or Office of Public Instruction ~~renewal~~ professional development units per calendar year related to the improvement of educational interpreting, performance, and knowledge skills. Such individuals will provide documentation of completion to their employing school district, cooperative, or contracting agency.

(6) remains the same.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-2-121, 20-7-101, MCA
IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-3-106, 20-7-101, MCA

10.55.721 HAZARD AND EMERGENCY PLANS (1) A local board of trustees shall adopt a policy addressing a school safety plan or emergency operations plan. The plan required by this rule shall be periodically reviewed with stakeholder input and updated as determined necessary by the trustees based on changing circumstances pertaining to school safety.

(2) remains the same.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-2-121, 20-7-101, MCA
IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-3-106, 20-7-101, MCA

10.55.801 SCHOOL CLIMATE (1) through (1)(b) remain the same.

(c) offer programs and services which, in content and presentation, endeavor to be free of stereotyping in terms of Article II, Section IV of the Montana Constitution and federal law ~~age, sex, religion, race~~, ~~national origin~~ with prejudice toward none~~, or handicapping condition~~;

(d) through (f) remain the same.

(g) encourage the active involvement of parents, families, and guardians in their children's education and in their school; ~~and~~

(h) provide opportunities for parents, families, guardians, educators, and members of the community to take active roles in developing and reviewing district and school educational goals~~.~~; and

(i) measure school climate through a valid and reliable tool to understand student, staff, family, and community perceptions of climate in their school and make data-driven decisions about programs and practices that could improve school climate.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-2-121, 20-7-101, MCA
IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-3-106, 20-7-101, MCA

10.55.802 OPPORTUNITY AND EDUCATIONAL EQUITY (1) It is the purpose of the accreditation standards to guarantee equality of educational opportunity and to respect the dignity of every person in accordance with Article II, Section IV of the Montana Constitution and federal law ~~regardless of race, color, sex, culture, social origin or condition, or political or religious ideas~~, with prejudice toward none. This includes, but is not limited to, programs, facilities, educational materials, curriculum, counseling, library services, and extracurricular activities.

AUTH: ~~Montana Constitution, Article II, Section 4,~~ Mont. Const. Art. II, sec. 4, Art. X, sec. 9, 20-2-114, 20-2-121, 20-7-101, MCA
IMP: ~~Montana Constitution, Article II, Section 4,~~ Mont. Const. Art. II, sec. 4, Art. X, sec. 9, 20-2-121, 20-3-106, 20-7-101, MCA

10.55.803 LEARNER ACCESS (1) Equal opportunity to learn is a primary

consideration of all program areas, at all levels. In order to integrate this concept throughout the education program, the local board of trustees shall develop and implement processes that ensure each learner has access to the following: ~~for assessing the educational needs of its students.~~

(a) high quality instruction provided by a qualified educator that meets each of the following criteria:

(i) students are engaged in authentic learning experiences that tie to their interests;

(ii) students are all included in activities and given equal opportunity;

(iii) uses formative and interim assessments to guide instruction;

(iv) supports student metacognition, self-assessment, and reflection; and

(v) provides opportunities for individual self-direction and decision making;

(b) rigorous learning activities that are complex, engaging, can be accessed by all learners, and match student interests;

(c) standards aligned curriculum and instructional materials that are place based, culturally diverse, honor differences among learners, reflect authentic historical and contemporary portrayals of American Indians, and include opportunity for choice and voice;

(d) technology hardware and software appropriate to support individual student learning;

(e) time for learning that includes opportunities for multiple modalities, collaboration in a variety of configurations, and student discussion;

(f) supportive learning environment that provides a safe physical space for learning, furniture and other fixtures that provide adequate space for students to fully engage in learning activities, is accessible to all learners, regardless of physical limitations; and

(g) other resources, such as after school programming, tutoring, paraprofessionals, counselors, librarians and libraries, and support staff.

~~(2) In implementing curriculum in all program areas, the local board of trustees shall:~~

~~(a) provide learning experiences matched to student's' interests, readiness, and learning styles;~~

~~(b) recognize individual and cultural diversity and differences among learners, including American Indians. Cultural and language differences should be viewed as valuable and enriching resources and should take into account the unique needs of American Indian students and other minority groups;~~

~~(c) ensure integration of the history, contemporary portrayals, and contributions of American Indians, with an emphasis on Montana Indians, across all content areas;~~

~~(d) provide learning resources that are relevant, culturally inclusive, and current;~~

~~(e) provide opportunities for individual self-direction and decision making;~~

~~(f) provide equal access to learning resources;~~

~~(g) provide instructional materials that support the adopted curricula; and~~

~~(h) provide books and materials that reflect authentic historical and contemporary portrayals of American Indians.~~

~~(3) The local board of trustees shall identify, using appropriate criteria,~~

~~students who may be at risk or in need of special services.~~

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-2-121, 20-7-101, MCA
IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-3-106, 20-7-101, MCA

10.55.804 GIFTED AND TALENTED (1) Districts shall provide educational services to gifted and talented students that are commensurate to their needs, ~~and~~ foster a positive self-image, and create a supportive learning environment.

(2) and (3) remain the same.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-2-121, 20-7-101, MCA
IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-3-106, 20-7-101, MCA

10.55.901 BASIC EDUCATION PROGRAM: ELEMENTARY (1) An elementary school shall have an education program aligned to the program area standards that enables students to meet the content standards and content-specific ~~grade-level~~ grade-band learning progressions and recognizes the distinct and unique cultural heritages of American Indians.

(2) Instruction in reading literacy and writing literacy shall be incorporated into all required and elective program areas as required in the Montana Content Standards.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-2-121, 20-7-101, MCA
IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-3-106, 20-7-101, MCA

10.55.902 BASIC EDUCATION PROGRAM: MIDDLE GRADES (1) A school with middle grades must have an education program aligned to the program area standards that enables all students to meet the content standards and content-specific ~~grade-level~~ grade-band learning progressions and recognizes the distinct and unique cultural heritages of American Indians.

(2) Instruction in reading literacy and writing literacy shall be incorporated into all required and elective program areas as required in the Montana Content Standards. ~~The Board of Public Education, upon recommendation of the Superintendent of Public Instruction, may approve a 7 and 8 grade program that must follow either the middle school philosophy and components described in (3) or the departmentalized philosophy and components described in (4).~~

~~(3) The Board of Public Education, upon recommendation of the Superintendent of Public Instruction, may approve a middle school program that:~~

~~(a) addresses the unique nature of middle-grade children by focusing on their intellectual, social, emotional, and physical development. To put such philosophy into practice, a middle school must have flexibility to:~~

~~(i) approach instruction, scheduling, and teaching in a variety of ways;~~

~~(ii) undertake interdisciplinary work; and~~

~~(iii) plan blocks of coursework deriving from the intellectual, social, emotional, and physical needs of middle school students.~~

~~(b) incorporates critical and creative thinking, career awareness, lifelong learning, and safety;~~

~~(c) incorporates instruction in reading literacy and writing literacy into all required and elective program areas as required in the Montana Common Core Standards, ARM Title 10, chapter 53;~~

(3)~~(d) includes, at~~ At a minimum, the following program areas~~,~~ as aligned with ARM 10.55.603 and 10.55.1001 are required of all students yearly:

~~(i)~~(a) English language arts;

~~(ii)~~(b) mathematics;

~~(iii)~~(c) ~~physical and life~~ sciences;

~~(iv)~~(d) social studies; ~~and~~

~~(v)~~(e) health and physical ~~enhancement~~ education; and

(f) elective/exploratory offerings at the discretion of the local board of trustees to provide a minimum of three of the following:

(i) arts (visual arts, media arts, theater arts, music, and dance);

(ii) career and technical education;

(iii) computer science;

(iv) world languages; and

(v) exploratory courses, for example: mathematics exploration, science exploration, business, creative writing, financial education, photography, and leadership.

~~(e) at a minimum maintains the following required program areas:~~

~~(i) visual arts including, but not limited to art history, art criticism, aesthetic perception, and production;~~

~~(ii) music including, but not limited to general, instrumental, and vocal (emphasizing comprehensive music elements, music history, criticism, aesthetic perception, and musical production);~~

~~(iii) career and technical education courses or pathways such as agriculture, business education, family and consumer sciences, health occupations and industrial technology education; and~~

~~(iv) world languages.~~

~~(f) offers as electives to all students exploratory courses such as creative writing, dance, drama, financial education, photography, and leadership.~~

~~(4) A junior high (grades 7-9) or 7-8 school must offer an educational program, aligned to the program area standards, that enables all students to meet the content standards and content-specific grade-level progressions.~~

~~(a) Instruction in reading literacy and writing literacy shall be incorporated into all required and elective program areas as required in the Montana Common Core Standards, ARM Title 10, chapter 53.~~

~~(b) All students shall complete the following program areas each year:~~

~~(i) English language arts--1 unit;~~

~~(ii) social studies--1 unit;~~

~~(iii) mathematics--1 unit;~~

~~(iv) science--1 unit; and~~

~~(v) health enhancement--1/2 unit.~~

~~(c) All students must be allowed to elect from the following program area offerings:~~

~~(i) visual arts--1/2 unit;~~

~~(ii) music--1/2 unit;~~

~~(iii) career and technical education--1/2 unit; and~~
~~(iv) world languages and cultures--1/2 unit.~~
~~(d) A unit is defined as the equivalent of at least 8100 minutes for one school year.~~
~~(e) Time to pass between classes may be counted toward the standard school day but shall not be counted toward class time.~~

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-2-121, 20-7-101, MCA
IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-3-106, 20-7-101, MCA

10.55.904 BASIC EDUCATION PROGRAM OFFERINGS: HIGH SCHOOL
(1) The basic education program, aligned to the program area standards, for grades 9 through 12 shall be at least 20 units of coursework that enable all students to meet the content standards and content-specific ~~grade-level~~ grade-band learning progressions and recognizes the distinct and unique cultural heritages of American Indians.
(2) Instruction in reading literacy and writing literacy shall be incorporated into all required and elective program areas as required in the Montana Content ~~Common Core~~ Standards, ARM Title 10, chapter 53.
(3) Minimum offerings shall include at least the following:
(a) 4 units of English language arts;
(b) 3 units of mathematics;
(c) 3 units of science;
(d) 3 units of social studies (including 1/2 unit of Civics or Government);
(e) 2 units of career and technical education;
(f) 2 units of arts;
(g) 1 unit of health ~~enhancement~~ and physical education;
(h) 2 units of world language~~s~~; ~~and~~
(i) 2 units of electives; and
(j) 1/2 unit of economics or financial literacy within the 3 units of social studies, the 3 units of mathematics, or the 2 units of career and technical education.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-2-121, 20-7-101, MCA
IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-3-106, 20-7-101, MCA

10.55.905 GRADUATION REQUIREMENTS (1) As a minimum, a school district's requirements for graduation shall include a total of 20 units of study that enable all students to meet the content standards and content-specific ~~grade-level~~ grade-band learning progressions. Students may demonstrate achievement through a flexible system of pupil-centered learning.
(2) In order for students to graduate, they must ~~to~~ meet the content and performance standards~~,~~. The ~~the~~ following 13 units shall be part of the 20 units. The required units may be satisfied by an equivalent course that meets the district's curriculum and assessment requirements, which are aligned with each of the content standards ~~required for all students to graduate~~:
(a) 4 units of English language arts;
(b) 2 units of mathematics;

(c) 2 units of social studies (including a 1/2 unit of Civics or Government);

(d) 2 units of science;

(e) 1 unit of health ~~enhancement,~~ and physical education ~~with 1/2 unit each year for two years~~;

(f) 1 unit of arts; ~~and~~

(g) 1 unit of career and technical education~~.~~; and

(h) 1/2 unit of economics or financial literacy within the 2 units of social studies, the 2 units of mathematics, or the 1 unit of career and technical education.

(3) Units of credit earned in any Montana high school accredited by the Board of Public Education shall be accepted by all Montana high schools.

(4) In accordance with the policies of the local board of trustees, students may be graduated from high school with less than four years enrollment.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-2-121, 20-7-101, MCA
IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-3-106, 20-7-101, MCA

10.55.906 HIGH SCHOOL CREDIT (1) A high school shall require a minimum of 20 units of credit for graduation, including ninth grade units.

(a) A unit of credit is defined as the equivalent of at least 8100 minutes for one year or demonstration of an equivalent course that meets the district's curriculum and assessment requirements, which are aligned with each of the content standards.

(b) through (4) remain the same.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-2-121, 20-7-101, MCA
IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-3-106, 20-7-101, MCA

10.55.907 DISTANCE, ONLINE, AND TECHNOLOGY-DELIVERED LEARNING (1) through (2)(a) remain the same.

(b) Distance, online, and technology-delivered learning programs and/or courses shall at a minimum be aligned with state content standards and content-specific ~~grade-level~~ grade-band learning progressions.

(c) Annually, ~~by the first Monday in June,~~ a school district shall provide a report to the Superintendent of Public Instruction documenting all distance, online and technology-delivered courses, student enrollments, and the digital content providers.

(3) Except as provided in (3)(a), teachers of distance, online, and technology-delivered learning programs shall be licensed and endorsed in Montana or elsewhere in the area of instruction taught ~~with such license granted as a result of the completion of an accredited professional educator preparation program as defined in ARM 10.57.102(3)~~. School districts receiving distance, online, and technology-delivered learning programs described in this rule shall have a distance learning facilitator for each course and available to the students.

(a) When a teacher of distance, online, and technology-delivered learning programs and/or courses does not possess the qualifications specified in (3), the facilitator must be licensed and endorsed in Montana or elsewhere in the area of instruction facilitated ~~with such license granted as a result of the completion of an~~

~~accredited professional educator preparation program as defined in ARM 10.57.102(3)~~.

(b) through (4) remain the same.

(5) Digital content providers serving Montana schools accredited by the Board of Public Education shall:

(a) annually~~, by the first Monday in August,~~ register with the Office of Public Instruction;

(b) annually~~, by the first Monday in June,~~ identify the Montana school districts served in the current school year by the digital content provider, including the courses and student enrollments for each school district served; and

(c) remains the same.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-2-121, 20-7-101, MCA
IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-3-106, 20-7-101, MCA

10.55.908 SCHOOL FACILITIES (1) and (2) remain the same.

(3) The local board of trustees shall provide for educational facilities which are functional and safe for the conduct of the educational and extracurricular activities of students, and which will meet state or federal accessibility standards.

(4) through (6) remain the same.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-2-121, 20-7-101, MCA
IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-3-106, 20-7-101, MCA

10.55.1001 PROGRAM STANDARDS (1) It is the local board of trustees' responsibility to ensure the district's curricula align with the state content standards and content-specific ~~grade-level~~ grade-band learning progressions.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-2-121, 20-7-101, MCA
IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-3-106, 20-7-101, MCA

10.55.1003 PROGRAM FOUNDATION STANDARDS (1) remains the same.

(2) Program foundation standards are the common conditions and practices that will be evident in all programs within a school system to ensure that all students have educational opportunity to learn, develop, and demonstrate learning in the content standards and content-specific ~~grade-level~~ grade-band learning progressions. All programs shall follow the content standards in the ~~accreditation~~ Administrative Rules of Montana. The local board of trustees shall:

(a) through (b)(vi) remain the same.

(vii) integrate information literacy skills~~,~~ and technology tools, ~~and workplace competencies~~ to support learning in all curricular areas; and

(viii) remains the same.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-2-121, 20-7-101, MCA
IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-3-106, 20-7-101, MCA

10.55.1101 ~~COMMUNICATION ARTS~~ ENGLISH LANGUAGE ARTS AND

LITERACY PROGRAM DELIVERY STANDARDS (1) In general, a basic program in ~~communication~~ English language arts and literacy shall:

(a) meet the following conditions:

(i) promote ~~literacy and language excellence in the spoken, written, and visual form; and~~ reading, writing, speaking, and listening for creative and purposeful expression in language;

(ii) engage with high-quality literary and informational text that builds knowledge, expands experiences, and broadens views; and

(iii) emphasize reasoning and use of evidence that is essential for deliberation;

~~(ii)~~ (iv) make available a variety of print and non-print materials encompassing fiction and non-fiction, classic and contemporary works, and diverse perspectives including Montana American Indian works~~.~~; and

(v) promote critical reading that is necessary to navigate the vast amount of information available both in print and digitally; and

(b) include the following practices:

(i) integrate reading, literature, writing, speaking, listening, and media literacy with a balanced approach supported by current research and/or based on best practices in the field of ~~communication~~ English language arts and literacy;

(ii) through (vi) remain the same.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-2-121, 20-7-101, MCA
IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-3-106, 20-7-101, MCA

10.55.1301 HEALTH AND PHYSICAL EDUCATION ~~ENHANCEMENT~~ PROGRAM DELIVERY STANDARDS (1) In general, a basic health and physical education ~~enhancement~~ program shall:

(a) meet the following conditions:

(i) maintain class size in accordance with other curriculum areas;

(ii) focus on the knowledge and skills necessary to maintain a healthy lifestyle;

(iii) integrate and include components of the traditional "health" and "physical education" disciplines;

(iv) maintain a program that meets the educational requirements of health and physical education ~~enhancement~~; ~~and~~

(v) provide for the participation of all students in a health and physical education program; and

(vi) maintain adequate first aid materials and communication device capabilities~~.~~; and

(b) remains the same.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-2-121, 20-7-101, MCA
IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-3-106, 20-7-101, MCA

10.55.1701 CAREER AND ~~VOCATIONAL/~~TECHNICAL EDUCATION PROGRAM DELIVERY STANDARDS (1) through (1)(b)(iii) remain the same.

(iv) leadership, ~~and~~ character development, ~~and~~ character, and employability skills through participation in career and technical student organizations (CTSOs);

(v) remains the same.

(vi) integration of career and ~~vocational/~~technical competencies with academic knowledge in a contextual setting.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-2-121, 20-7-101, MCA
IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-3-106, 20-7-101, MCA

10.55.1801 LIBRARY MEDIA AND INFORMATION LITERACY PROGRAM DELIVERY STANDARDS (1) remains the same.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-2-121, 20-7-101, MCA
IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-3-106, 20-7-101, MCA

10.55.1901 SCHOOL COUNSELING PROGRAM DELIVERY STANDARDS

(1) In general, school counseling shall:

(a) meet the following conditions:

(i) provide a comprehensive, preventive, and developmentally planned program to all students systematically;

(ii) develop and implement a counseling program based on data-informed decision making;

~~(ii)~~(iii) advocate for all students and encourage students to develop to their full potential;

~~(iii)~~(iv) respect the worth and dignity of all individuals by building trust and respecting confidentiality; ~~and~~

(v) value and respond to the diversity and individual differences in communities in a culturally responsive manner; and

~~(iv)~~(vi) contribute as an integral part of the education process that is delivered through a variety of systems by school staff, students, ~~parents~~ families, business, and industry.

(b) include the following practices:

(i) remains the same.

(ii) develop, implement, and assess a ~~guidance~~ curriculum aligned with the American School Counselor Association (ASCA) national model which includes the student standards for success, mindsets, and behaviors which is presented through structured groups and classroom presentations;

(iii) and (iv) remain the same.

(v) provide system support through management, consultation with staff, community outreach, and public relations~~.~~; and collaborate with families, community stakeholders, and other educators to create environments resulting in positive impact on student achievement, attendance, and discipline.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-2-121, 20-7-101, MCA
IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-3-106, 20-7-101, MCA

10.55.2101 WORLD LANGUAGES PROGRAM DELIVERY STANDARDS

(1) through (1)(b)(ii) remain the same.

(iii) ~~build an authentic cultural ambiance~~ gain understanding of the cultural perspectives of the target culture.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-2-121, 20-7-101, MCA
IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-3-106, 20-7-101, MCA

5. The Board of Public Education proposes to repeal the following rules:

10.55.711 GENERAL: CLASS SIZE AND TEACHER LOAD

AUTH: 20-2-114, MCA
IMP: 20-2-121, MCA

10.55.1302 HEALTH ENHANCEMENT PARTICIPATION

AUTH: 20-2-114, MCA
IMP: 20-2-121, MCA

6. The Board of Public Education proposes to transfer the following rule:

OLD	NEW	
10.55.607	10.57.114	INTERNSHIPS

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-2-121, 20-7-101, MCA
IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-3-106, 20-7-101, MCA

REASON: By authority of 20-7-101, MCA, Standards of Accreditation for all schools are adopted by the Board of Public Education upon the recommendation of the Superintendent of Public Instruction. The board considers recommendations for revision of the policies at any time it deems necessary and conducts a comprehensive review of standards of accreditation policies on a regular cycle to ensure that such policies are meeting the needs of the state. There have been numerous revisions over the last decade, but the last comprehensive review was in 2013.

The Office of Public Instruction facilitated the comprehensive review process to amend ARM Title 10, chapter 55, Standards of Accreditation, with input from a task force and negotiated rulemaking committee comprised of education stakeholders appointed by the superintendent.

Based on recommendations from the task force and the negotiated rulemaking committee, the superintendent has proposed new rules specific to charter school applications, family and community engagement, mentorship and induction, evaluation, and English learners. The superintendent has proposed comprehensive amendments to existing rules to clarify language and process; clarify and add necessary definitions; clarify and amend school district policy requirements;

add and define student performance and provide transparency to the accreditation process; address the process for application for variance to accreditation standards; clarify the categories of accreditation and the consequences for deficiencies; delineate the procedures used by the Office of Public Instruction when reviewing accreditation status, program, and assurance standards; and update program foundation standards. Other amendments are made for consistency with other Board of Public Education rules.

7. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: McCall Flynn, Executive Director, Board of Public Education, 46 N Last Chance Gulch, Suite 2B; P.O. Box 200601, Helena, MT 59620-0601; telephone (406) 444-0300; fax (406) 444-0847; or e-mail bpe@mt.gov, and must be received no later than 5:00 p.m., November 4, 2022.

8. McCall Flynn, Executive Director, Board of Public Education, has been designated to preside over and conduct this hearing.

9. The Board of Public Education maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in #7 above or may be made by completing a request form at any rules hearing held by the Board of Public Education.

10. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sosmt.gov/ARM/Register.

11. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

12. With regard to the requirements of 2-4-111, MCA, the Board of Public Education has determined that the adoption, amendment, repeal, and transfer of the above-referenced rules will not significantly and directly impact small businesses.

/s/ McCall Flynn
McCall Flynn
Rule Reviewer

/s/ Tammy Lacey
Tammy Lacey
Chair
Board of Public Education

Certified to the Secretary of State September 27, 2022.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 24.17.127 pertaining to prevailing wages	)))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On November 18, 2022, at 10:00 a.m., the Department of Labor and Industry (department) will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rule. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

a. Join Zoom Meeting, https://mt-gov.zoom.us/j/81882444944, Meeting ID: 818 8244 4944, Passcode: 452256; or

b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656, Meeting ID: 818 8244 4944, Passcode: 452256.

The hearing will begin with a brief introduction by department staff to explain the use of the videoconference and telephonic platform. All participants will be muted except when it is their time to speak.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on November 10, 2022, to advise us of the nature of the accommodation that you need. Please contact the Data Management Unit, Employment Standards Division, Department of Labor and Industry, Attn: Mike Smith, P.O. Box 8011, Helena, MT 59604-8011; fax (406) 444-4140; or e-mailed to msmith3@mt.gov.

3. The rule proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

24.17.127 ADOPTION OF STANDARD PREVAILING RATE OF WAGES

(1) through (1)(d) remain the same.

(e) The current building construction services rates are contained in the ~~2022~~ 2023 amended version of the "Montana Prevailing Wage Rates for Building Construction Services" publication.

(f) The current nonconstruction services rates are contained in the ~~2022~~ 2023 version of the "Montana Prevailing Wage Rates for Nonconstruction Services" publication.

(g) The current heavy construction services rates are contained in the ~~2022~~ 2023 amended version of the "Montana Prevailing Wage Rates for Heavy Construction Services" publication.

(h) The current highway construction services rates are contained in the ~~2022~~ 2023 version of the "Montana Prevailing Wage Rates for Highway Construction Services" publication.

(2) and (3) remain the same.

AUTH: 2-4-307, 18-2-409, 18-2-431, MCA
IMP: 18-2-401, 18-2-402, 18-2-403, 18-2-406, 18-2-411, 18-2-412, 18-2-413, 18-2-414, 18-2-415, 18-2-422, 18-2-431, MCA

REASON: There is reasonable necessity to update the prevailing wage rates for building construction services, heavy construction services, highway construction services, and nonconstruction services following the annual survey of wages that is provided for in 18-2-413, 18-2-414, and 18-2-415, MCA, respectively. The department surveys employers and applies the methodologies provided by ARM 24.17.119 through 24.17.122 to determine those prevailing wage rates.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Data Management Unit, Employment Standards Division, Department of Labor and Industry, Attn: Mike Smith, P.O. Box 8011, Helena, MT 59604-8011; fax (406) 444-4140; or e-mailed to msmith3@mt.gov, and must be received no later than 5:00 p.m., November 18, 2022.

5. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies the particular subject matter or matters regarding which the person wishes to receive notices. Such written request may be mailed or delivered to the contact person in paragraph 2 above or may be made by completing a request form at any rules hearing held by the agency.

6. The bill sponsor contact requirements of 2-4-302, MCA, do not apply..

7. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule may significantly and directly impact small businesses. The proposed amendments will have an impact on some, but not all small businesses (those with fewer than 50 full-time employees). The proposed amendments directly affect the wages that must be paid for work on Montana public works contracts. The types of businesses affected are primarily those in the construction industry, but only affect those businesses that perform (or seek to perform) work on public works projects. In addition, there are businesses that provide certain types of nonconstruction services to state and local government agencies that are subject to payment of the prevailing wage rate. The types of nonconstruction service businesses that potentially are subject to the award of a public works contract are listed in 18-2-401(9), MCA.

There is no single effect on small businesses as a result of the proposed amendments. Some employers may have to pay higher wages as a result of changes to the prevailing wage rates; other employers may have a wage structure that is the same as or higher than the prevailing wage rate. Historically, some employers have stated that the prevailing wage rates are set too high, while other employers have stated that the rates are too low. In certain cases the difference between the established prevailing wage rate and the employer's customary wage rate may be significant, but it is unclear whether that difference will result in a significant change to the profitability of any given small business, as there are many other economic factors at play.

Montana law requires that prevailing wage rates be set following an annual survey of wages. There is an established statutory and administrative formula that establishes the prevailing wage rate for each work classification, based on the data and information gathered. The alternative to amending the wage rates is to not amend the rate, thus freezing the wage rate at the last-adopted level. Some employers would probably be adversely affected by the failure to adopt new prevailing wage rates. The department believes that under either alternative, some small businesses will be adversely affected by the selected alternative. The small businesses likely to be adversely affected by adoption of new rates are probably not the same as those that are likely to be adversely affected by not adopting new rates.

8. Department staff has been designated to preside over and conduct this hearing.

/s/ QUINLAN L. O'CONNOR
Quinlan L. O'Connor
Alternate Rule Reviewer

/s/ LAURIE ESAU
Laurie Esau, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State September 27, 2022.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.24.201, 17.24.202, 17.24.212, 17.24.213, 17.24.214, 17.24.218, 17.24.219, 17.24.220, 17.24.221, 17.24.222, and 17.24.226 and the adoption of New Rule I, New Rule II, and New Rule III pertaining to the opencut mining program	)	NOTICE OF AMENDMENT AND ADOPTION (OPENCUT MINING)

TO: All Concerned Persons

1. On July 8, 2022, the Department of Environmental Quality (department) published MAR Notice No. 17-425, pertaining to the proposed amendment and adoption of the above-stated rules at page 1152 of the 2022 Montana Administrative Register, Issue No. 13.

2. The department has amended ARM 17.24.201, 17.24.202, 17.24.212, 17.24.213, 17.24.214, 17.24.218, 17.24.219, 17.24.220, 17.24.221, 17.24.222, and 17.24.226 as proposed.

3. The department has adopted NEW RULE I (17.24.208), NEW RULE II (17.24.227), and NEW RULE III (17.24.228) as proposed.

4. The department has thoroughly considered the comments made. A summary of the comments and the department's responses are as follows:

COMMENT NO. 1: The commenter asked why the definition of "intermittent stream" in ARM 17.24.202(6) is different from the definition found in the Water Use Act.

RESPONSE: The proposed rule amendment defines "intermittent stream" as a stream or reach of a stream that is below the local water table for at least some part of the year and obtains its flow from both ground water discharge and surface runoff." Section 85-2-355(2), MCA defines the term to mean "a perennial flowing stream that has a channel and that annually carries water but is dry for part of the year in most years." The definition in the proposed rule amendment is more precise by excluding channels that carry only surface runoff.

The definition of "intermittent stream" in the proposed rule amendment is consistent with the definition of "intermittent stream" used by other programs within the Mining Bureau of the department, with a slight adjustment to wording for clarity.

COMMENT NO. 2: The department received 34 comments asking the department to amend the proposed rules to include better protections for water, property rights, and public participation.

RESPONSE: The department is enacting administrative rules implementing

House Bill No. 599 and Senate Bill No. 284 enacted by the 2021 Montana Legislature. The legislation revised Montana's Opencut Mining Act. The new rules are consistent with SB 284 and HB 599.

COMMENT NO. 3: The department received 34 comments wanting to make sure that the department is protecting water quality and quantity, limiting dust pollution, and controlling runoff from the mine site to neighboring properties, ponds, and streams.

RESPONSE: The department is enacting administrative rules implementing House Bill No. 599 and Senate Bill No. 284 enacted by the 2021 Montana Legislature. The legislation revised Montana's Open Mining Act. The proposed rules are consistent with SB 284 and HB 599.

COMMENT NO. 4: The department received 48 comments stressing that the department must guarantee the sharing of public information, notifications, and meaningful participation for all proposed gravel operations.

RESPONSE: Section 82-4-432, MCA, was amended in 2021 by HB 599 and governs public notice and participation requirements associated with applications for opencut permits. The department has not proposed rule amendments or new rules for public notice or public participation for standard permits. The proposed amendment to ARM 17.24.228 implements the public notice and public participation requirements for dryland permits created by HB 599. The proposed update is consistent with the Opencut Mining Act.

COMMENT NO. 5: The department received 35 comments stating that the department must require reclamation deadlines for all sites, and that the department should enforce those deadlines by shutting down operations that have not been reclaimed by the reclamation deadline stated in the permit.

RESPONSE: Under 82-4-431(6) and (7), MCA, operators applying for standard permits and dryland permits are required to include a reclamation date with their applications. The proposed amendment to ARM 17.24.213 deletes language that is duplicative to the provisions of 82-4-431(6) and (7), MCA.

COMMENT NO. 6: The department received 47 comments asking the department to accept and incorporate public comment before determining whether the mine site will occur in an ephemeral, intermittent, or perennial stream, or in areas where the operation may intercept surface or groundwater.

RESPONSE: The department accepts and considers public comments throughout its review of an opencut permit application.

COMMENT NO. 7: The department received 48 comments regarding the department's obligation to comply with the Montana Environmental Policy Act (MEPA), to provide the public with the opportunity to comment and review the proposed application, and to allow for the public to participate in the process. If the department does not allow for the participation, this is going against MEPA, which is unlawful.

RESPONSE: As is required by MEPA, the department identifies and

discloses environmental impacts that may result from issuance of an opencut permit in an environmental review document.

COMMENT NO. 8: The department received 47 comments from commenters stating that that the Montana Constitution guarantees the public the right to be notified about industrial operations such as opencut mines, and to participate in those permitting processes in a meaningful way to ensure a clean and healthful environment.

RESPONSE: Section 82-4-432, MCA, of the Opencut Mining Act implements the public's right to participate under the Montana Constitution. The proposed rule amendments implement 82-4-432, MCA.

COMMENT NO. 9: The commenter was concerned that the rules would gut water resource protections and restrict the ability of nearby landowners to be informed and participate during the permitting process.

RESPONSE: Please see responses to Comment Nos. 2, 4, 12, and 23.

COMMENT NO. 10: The commenter stated that they were not notified about the public hearing on the proposed rulemaking, which they alleged was a violation of their constitutional rights.

RESPONSE: The department provided notice of the proposed rulemaking, including notice of the public hearing, consistent with the requirements of the rulemaking provisions of the Montana Administrative Procedure Act.

COMMENT NO. 11: The department received 10 comments regarding a permit application for an operation that would be located near Arlee, MT. Commenters voiced concerns with increased truck traffic, risks to the aquifer and reduced water quality and quantity, increased noise pollution, not enough oversight or enforcement of state laws and regulations, increased air pollution and aggravation of breathing issues for seniors and health-compromised individuals, and a decrease in property values and reduced tax income for the county or the state.

RESPONSE: Addressing the environmental review of a specific permit application is outside of the scope of the current rulemaking.

COMMENT NO. 12: The department received 24 comments stating that all permit applicants should be required to provide information on water resources on, under, or near the site including, but not limited to, ephemeral, intermittent, and perennial streams. Additionally, a map of the proposed operation depicting its boundaries should be submitted with the application. The boundaries should not be closer than 150 feet from surface water.

RESPONSE: The Opencut Mining Act does not require the specified information about water resources to be included in an application for an opencut permit. In response to the comment that the department should require a 150-foot setback from surface water, the department determined that a 50-foot setback is a sufficient buffer between the high-water mark of surface water and the permit boundary of opencut operations. A 50-foot buffer provides adequate protection for surface water while allowing the opencut operation to mine according to its permit.

COMMENT NO. 13: The commenter stated that the new rules guarantee no protections and should be amended so that they do.

RESPONSE: Please see responses to Comment Nos. 2 and 4.

COMMENT NO. 14: The commenter stated that the new rules make it easier for mines to be permitted, by removing requirements in ARM 17.24.218, referring to the requirement for operators to submit well logs, water levels and depths, and New Rule III with public notice requirements

RESPONSE: Please see responses to Comment Nos. 2, 12, and 23.

COMMENT NO. 15: The commenter was opposed to the ways that environmental protections have been lifted in the requirements of the application process (ARM 17.24.218), particularly where water is concerned.

RESPONSE: Please see responses to Comment Nos. 2, 12, and 23.

COMMENT NO. 16: The commenter was concerned with the proposed amendment to ARM 17.24.218 that deletes requirements relating to the plan of operation. The commenter was also concerned that the proposed amendment to ARM 17.24.202 requires only those property owners within one-half mile of the proposed permit boundary to be contacted. This is ineffective to provide for the Constitutional rights protected under the Freedom of Information Act of all residents impacted by the operations of a gravel pit and asphalt plant

RESPONSE: The proposed amendment to ARM 17.24.218, deleting requirements related to a plan of operations, reflects the amendments to the Opencut Mining Act enacted by HB 599. HB 599 also amended the public participation provisions of 82-4-432, MCA. Only landowners with occupied dwelling units within one-half mile of the proposed border of the opencut operation are required to be notified. The proposed amendment to ARM 17.24.202 contains the definition of "occupied dwelling unit" stated in HB 599 in regard to standard permits. New Rule III (ARM 17.24.228) implements HB 599 for dryland permits.

COMMENT NO. 17: The commenter wanted clarification of ARM 17.24.219(1)(c)(vi). The commenter appreciated the addition of "if available" being added to the rule language. However, the commenter was unclear on whether the operator is required to salvage up to 24 inches of topsoil and overburden regardless of specific site conditions, or if the 24 inches of material would be salvaged only if it is available.

RESPONSE: Under the proposed amendment to ARM 17.24.219(1)(c)(vi), an operator is required to salvage 24 inches of topsoil and overburden, if that quantity is available, before beginning opencut operations. If, before beginning opencut operations, the operator determines that 24 inches of topsoil and overburden are not available, the operator is required to salvage all available topsoil and overburden.

COMMENT NO. 18: In reference to the statement of reasonable necessity for the proposed deletion of ARM 17.24.215(5), the commenter asked the department to

provide a statutory citation requiring archeological and historical values on affected lands to be given "legally required" protection.

RESPONSE: HB 599 enacted 82-4-434(2)(f), MCA, to require a plan of operation for a standard permit provide legally required protection to historical and archaeological values on land affected by an operation. HB 599 also shifted the responsibility to comply with Montana State Historic Preservation Office requirements from the department to the operator. These statutory changes are reflected in the proposed amendment to ARM 17.24.215(5).

If the proposed opencut operation is to be located on federal land, the operator must comply with Section 106 of the National Historic Preservation Act. If the proposed operation is to be located on state land, the Montana State Antiquities Act (22-3-421 through 22-3-442, MCA), the Montana Environmental Policy Act (Title 75, Ch. 1, part 2, MCA), the Unmarked Burial Act (22-3-801 through 22-3-811, MCA), and the Montana Repatriation Act (22-3-901 through 22-3-921, MCA) require state agencies to consult with the Montana State Historic Preservation Office concerning the identification and preservation of heritage properties before state action is taken. If the proposed opencut operation is to be located on private land, only the Unmarked Burial Act applies to protect human skeletal remains. The department completes an environmental review under the Montana Environmental Policy Act to identify potential impacts to the physical environment, including potential impacts to historical and archaeological value.

COMMENT NO. 19: The commenter asked for clarification on the proposed amendment to ARM 17.24.218(1)(d)(viii), in regard to berm length and location.

RESPONSE: The proposed berm length and location are required to be shown on the site map provided by the operator to the department during the application review process. The function of the berm is to shield residences located within 300 feet of the boundary of an opencut mining operation from viewing the operation. The berm location and length should be that which is required to conceal the opencut operation from view of the residents.

Under HB 599, the placement of berms is not required for dryland opencut operations.

COMMENT NO. 20: The commenter had questions regarding New Rule I (ARM 17.24.208(2)) and New Rule I (ARM 17.24.208(4)(b)) when comparing the language to ARM 17.24.219(1)(c)(vi). The commenter questioned whether the words "if applicable" were erroneously omitted. Additionally, the commenter suggested that at many bentonite mines, bentonite is exposed at the surface. In these instances, there may not be any suitable material, or often not 24 inches of available soil and overburden, to salvage for reclamation.

RESPONSE: New Rule I (ARM 17.24.208) only applies to permit applications to mine soil. Because the nature of soil mining assumes that the amount of soil at the site exceeds a depth of 24 inches, the "if available language" has been omitted from the proposed rule.

ARM 17.24.219(1)(c)(vi) states the soil salvage requirements for standard permits other than soil mines. Under 82-4-432(14)(i), MCA, an operator is required to salvage all soil from an area to be mined under a dryland permit.

ARM 17.24.207 sets forth additional requirements for bentonite mines, including submission of a soil analysis and a map identifying the soil types, location and depth of each sample, thickness of soil and overburden to be stripped for each soil type, and the dominant vegetative species present on each soil type. The operator of a bentonite mine is not required to reclaim the site to a better condition than what existed prior to mining. Thus, if there was no soil or overburden at the site prior to mining, none would be required to be available for reclamation.

COMMENT NO. 21: The department received four comments stating that the department must hold permit applicants responsible for notifying surrounding neighbors, including clearly posted signs and a map of the boundaries and dimensions of the operation.

RESPONSE: HB 599 changed the threshold requirements for a public meeting. Please see Response to Comment No. 16. Under HB 599, the permit applicant is responsible for providing the required public notice.

COMMENT NO. 22: The department received two comments asking that the requirements for all application materials be included in the rules instead of referencing the forms available on the department's website.

RESPONSE: The application forms developed by the department incorporate the requirements of the Opencut Mining Act and its associated administrative rules.

COMMENT NO. 23: The department received two comments stating that the department must seek feedback from affected neighbors pertaining to water resources.

RESPONSE: Montana's Opencut Mining laws do not regulate groundwater quality or quantity. However, other programs at DEQ regulate potential impacts to water quality, and the Department of Natural Resources and Conservation (DNRC) generally regulates water quantity. Additional information concerning water resources and Opencut Mining permitting is available on the DEQ website at: https://deq.mt.gov/mining/assistance.

COMMENT NO. 24: The commenter stated that the department did not respond to their request for a public hearing on a specific permit application and their name was not included in the list of people who had submitted requests for a public meeting.

RESPONSE: Please see the responses to Comment Nos. 6, 8, 16, and 21.

COMMENT NO. 25: The department received three comments stating that HB 599 and the proposed rules strip out important provisions for public participation and protecting and regulating environmental impacts.

RESPONSE: Please see the responses to Comment Nos. 6, 8, 16, and 21.

COMMENT NO. 26: The commenter stated that the public should be able to view a completed permit without deficiencies before being asked to request a public meeting.

RESPONSE: Under 82-4-432(10)(b), MCA, the department is required to

review a deficiency response and notify the applicant as to the application is acceptable within 10 working days of receipt of an applicant's response. Under 82-4-432(10)(c), MCA, if the application is acceptable, the department issues a permit to the operator.

COMMENT NO. 27: The commenter requested that DEQ suspend processing permits for standard gravel operations and suspend the rule amendments and new rules.

RESPONSE: The department does not have the authority to suspend the processing of applications for standard gravel operations.

COMMENT NO. 28: The department received five comments stating that the department should respond to each commenter during the public comment process, and that the new rules remove the possibility for conversation between the State and landowners.

RESPONSE: Please see the responses to Comment Nos. 6, 8, 16, and 21.

COMMENT NO. 29: The commenter stated that the regulation of environmental impacts has been moved to other regulatory groups, but that public participation in those processes is unclear.

RESPONSE: Additional information concerning opencut mining permitting, water protection, air quality, additional regulatory requirements at potential sites, and the public participation process is available on the DEQ website at: https://deq.mt.gov/mining/assistance.

COMMENT NO. 30: The commenter stated that HB 599 seeks to unconstitutionally circumvent public involvement, causes agricultural land without inhabited dwellings to be vulnerable, and is a dangerous oversimplification of a complex process.

RESPONSE: The department is proposing administrative rules implementing House Bill No. 599 and Senate Bill No. 284 enacted by the 2021 Montana Legislature. The legislation revised Montana's Opencut Mining Act. The proposed rules are consistent with SB 284 and HB 599.

COMMENT NO. 31: The commenter stated that the proposed rules are inadequate and need significant revisions to meet legislative intent, to pass constitutional muster, and to protect natural resources and neighboring property rights. The department should pause after being criticized by the sponsor of HB 599 for misinterpreting the rule. The department ignored and opposed suggestions during rulemaking from anyone who was not a developer and department staff. The department needs to fix the rules to ensure that people are not unfairly treated, natural resources are protected, and homes are not devalued. The rules make a mockery of Montanans' constitutional rights to participate, to a clean and healthful environment, and for all lands to be reclaimed.

RESPONSE: The department is proposing administrative rules implementing House Bill No. 599 and Senate Bill No. 284 enacted by the 2021 Montana Legislature. The legislation revised Montana's Opencut Mining Act. The proposed

rules are consistent with SB 284 and HB 599.

In developing the proposed rule amendments and new rules, the department held three group meetings with stakeholders representing various interests, including operators, non-governmental entities, and representatives from environmental associations. During the meetings with these work groups, the department encouraged all participants to provide feedback and to discuss potential issues with the department's proposed rulemaking. The department considered each opinion presented and did not ignore any participant.

COMMENT NO. 32: The department's rules should require an applicant to submit permit applications for all DEQ permits for the same mine at the same time (including the open cut permit, air permit, and water permits).

RESPONSE: The Opencut Mining Act does not require an application for an opencut permit to be submitted at the same time as other authorizations that may be needed for the proposed operation.

COMMENT NO. 33: The department should conduct a robust Montana Environmental Policy Act (MEPA) analysis on each project in its entirety including all necessary permits and allow for public comment on the overarching analysis. DEQ should not piecemeal the MEPA analysis by having each program issue a cursory checklist EA while the impacts of the entire project are not adequately considered. MEPA should be conducted on the entire proposed operation.

RESPONSE: The department is required to conduct a MEPA analysis for each state action and to meet the underlying statutory deadlines for each state action. Please see the response to Comment No. 32.

COMMENT NO. 34: An applicant should be prohibited from receiving a general water or air permit if there is no other opportunity for site-specific public comments on water or air related issues.

RESPONSE: Please see the responses to Comment Nos. 29 and 32.

COMMENT NO. 35: The department received two comments stating that the department's review of all permit amendment applications, including changes to post-mining land uses, must require public notice and comment periods.

RESPONSE: Please see the responses to Comment Nos. 6, 8, 16, and 21.

COMMENT NO. 36: When DEQ posts a rule on its website for public review, it should only post the actual rule at issue and not all of the unrelated rules that were published on the same day. It is unreasonable to require people to dig through a long document full of completely unrelated issues to find out about the matter that is referenced on the agency website.

RESPONSE: The department will consider the comment when posting future rulemakings to the department's website.

COMMENT NO. 37: The commenter stated that they have appealed a department permitting decision to the Board of Environmental Review and have been in the appeals process for two years and eight months.

RESPONSE: Addressing specific permitting actions and appeals to the Board of Environmental Review is outside of the scope of the current rulemaking.

COMMENT NO. 38: The commenter stated that HB 599 would result in a number of lawsuits and a lot of expense for the State to defend it.

RESPONSE: Addressing the merits of HB 599 is outside of the scope of the current rulemaking.

COMMENT NO. 39: The commenter stated that they would like to be able to see all relevant permits related to an opencut application in one place on the department's website.

RESPONSE: See the responses to Comment Nos. 29 and 32.

/s/ Edward Hayes
EDWARD HAYES
Rule Reviewer

/s/ Christopher Dorrington
CHRISTOPHER DORRINGTON
Director
Department of Environmental Quality

Certified to the Secretary of State September 27, 2022.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to temporary water quality standards variances	NOTICE OF ADOPTION (WATER QUALITY)

TO: All Concerned Persons

1. On July 8, 2022, the Department of Environmental Quality (department) published MAR Notice No. 17-427, pertaining to the public hearing on the proposed adoption of the above-stated rule at page 1171 of the 2022 Montana Administrative Register, Issue No. 13.

2. The department has adopted New Rule I (17.30.662) as proposed, but with the following changes, stricken matter interlined, new matter underlined:

NEW RULE I (17.30.662) TEMPORARY WATER QUALITY STANDARDS VARIANCES (1) and (2) remain as proposed.

(3) The department shall review each application to determine whether a reasonable alternative is available that would eliminate the need for the variance. Reasonable alternatives include:

(a) a permit compliance schedule;

(b) reuse, trading, recharge, or land application of the pollutant; or

~~(c) a TMDL for the pollutant requiring the permittee to meet an established waste load allocation; or~~

~~(d)~~(c) other department or permittee actions.

(4) through (6) remain as proposed.

(7) ~~The variance may be used to develop MPDES permit limits.~~ The variance must be used to develop MPDES permit limits, unless another lawful permitting option is chosen by the permittee and approved by the department. A permit incorporating a variance issued by the department under this rule is subject to ARM Title 17, chapter 30, subchapter 13.

(8) through (12) remain as proposed.

AUTH: 75-5-201, 75-5-320, MCA
IMP: 75-5-320, MCA

3. The department has thoroughly considered the comments made. A summary of the comments and the department's responses are as follows:

COMMENT NO. 1: Any new or renewed variance for nutrients should rely on updated economic data to justify economic hardship.

RESPONSE: The department agrees. Water quality standards variances, when issued based upon economic and social impacts, will be developed using current economic information.

COMMENT NO. 2: The proposed NEW RULE I fails to require a variance term to be for the shortest period necessary to achieve the highest attainable condition.

RESPONSE: The department does not agree with the comment. NEW RULE I and any variances developed under it must be consistent with federal rules at 40 CFR 131.14; the federal rules, adopted by reference in NEW RULE I, require that the variance term must only be as long as necessary to achieve the highest attainable condition. See 40 CFR 131.14(b)(1)(iv).

COMMENT NO. 3: NEW RULE I fails to require a thorough pollution control plan describing activities necessary to achieve the highest attainable condition, or how a discharger will make consistent progress improvements towards water pollution control.

RESPONSE: A permittee operating under an approved variance is required to implement optimization study actions to maximize pollution reductions; this requirement must be incorporated as terms and conditions of a discharge permit, pursuant to 75-5-320(2), MCA. It is not necessary to repeat the corresponding statutory language in rule. The submittal of an optimization study is required as part of the variance application process pursuant to NEW RULE I(2)(j). When no additional feasible pollution control technology can be identified, pursuant to NEW RULE I(2)(k), permittees must also prepare and implement a pollutant minimization plan that contains a structured set of activities to improve processes and pollutant controls that will prevent and reduce pollutant loading.

COMMENT NO. 4: The U.S. Environmental Protection Agency finds that the rule does not appear to be inconsistent with the requirements of 40 CFR 131.14.

RESPONSE: The department acknowledges the comment.

COMMENT NO. 5: Sections (2) and (3) lack coherency in terms of requirements for obtaining a variance and mandatory pollution control activities necessary during a variance term.

RESPONSE: The department does not agree with the comment. NEW RULE I contains the requirements necessary for the application submittal process (see NEW RULE I(2)(a) through (k)). If the variance is ultimately granted, the steps and procedures in the facility's optimization study must be implemented. These steps and procedures will be facility-specific and need to be defined on a case-by-case basis. See also response to COMMENT NO. 3.

COMMENT NO. 6: DEQ should revise the optimization study (NEW RULE I(2)(j)) to include a comparison between an applicant's maximum treatment potential vs. existing operations.

RESPONSE: The rule already includes this requirement. For example, in cases where a variance is based on substantial and widespread economic impacts, a community's economic capability defines the maximum treatment potential for that term of the variance. NEW RULE I requires applicants to identify and justify the highest attainable condition (HAC) when applying for a variance, and the HAC must be reviewed by the department before any application is granted. An updated HAC

must also be provided at subsequent variance renewals. See also response to COMMENT NO. 3.

COMMENT NO. 7: We are concerned that the alternatives to a variance found in NEW RULE I(3) are not grounded in clear requirements under federal or state law.

RESPONSE: The department does not agree with the comment. The purpose of NEW RULE I(3) is to provide the department a nonexclusive list of alternatives it should consider that may preclude the need for a variance. This is consistent with 75-5-320(1)(c), MCA, which requires the department to consider whether a variance is reasonably necessary. See also response to COMMENT NO. 8.

COMMENT NO. 8: We oppose inclusion of (3)(c)'s language regarding the existence of a TMDL as potential grounds for precluding the need for a variance; the TMDL cannot be the basis for assuming an applicant is adequately protecting local water quality.

RESPONSE: The department agrees that the inclusion of a total maximum daily load (TMDL) in the context of an alternative to a variance is not necessary. In situations where a TMDL establishes a waste load allocation and a variance is granted, the permit should include effluent limits derived from the variance, including any interim effluent limits approved in the variance. In situations where the permittee is already meeting the waste load allocation defined in an approved TMDL, a variance is not needed. A waste load allocation must, by definition, be derived such that it meets water quality standards. Where a permittee is already meeting the underlying water quality standards, through the imposition of a TMDL-based waste load allocation, a variance is also not available under 75-5-320(1)(c)(i), MCA. The department will delete the TMDL alternative at proposed NEW RULE I(3)(c) and renumber subsections accordingly.

COMMENT NO. 9: Section (7) does not comply with EPA's mandatory variance rule in 131.14(c); the first sentence should be reworded from "may" to "shall."

RESPONSE: The department agrees with the comment, in part, and will change the first sentence of NEW RULE I(7) as follows, "The variance must be used to develop MPDES permit limits, unless another lawful permitting option is chosen by the permittee and approved by the department." The rule language is added because the department foresees a scenario where a permittee is covered under a multi-discharger variance but wishes to pursue another lawful permitting option.

COMMENT NO. 10: The term "variance" should, throughout NEW RULE I, be changed to "temporary variance."

RESPONSE: The recommend edit adds unnecessary length to the rule; the rule title and (1) are clear that variances under NEW RULE I are temporary. All water quality standards variances are limited by their term and are therefore temporary. No changes were made to the rule in response to this comment.

COMMENT NO. 11: Prior to issuing a permit renewal, the department should notify a permittee of pending effluent limitation modifications and provide the permittee an opportunity to request a variance.

RESPONSE: The department already informs permittees of any pending changes to existing effluent limitations during the permitting renewal process. Permittees are also familiar with the water quality parameters they are having difficulty meeting in their permits, and NEW RULE I provides that a permittee can apply for a variance at any time. There is significant process within the department's permitting rules, such that communication about the need for a potential variance should reasonably occur prior to the issuance of any draft permit. The department does not believe that additional rule language changes are necessary.

COMMENT NO. 12: The department should modify NEW RULE I(2) to include reference to a guidance document which will be available from the department to help permittees understand the specific requirements of a variance application.

RESPONSE: The department does not have a guidance document developed at this time and believes that the basic requirements for a variance are sufficiently clear in the proposed rule and federal regulations. However, if it proves necessary, the department may develop a guidance document providing additional detail on how to apply for a variance.

COMMENT NO. 13: In NEW RULE I(2)(h), it should be made clear that a variance may be based on any of the six factors, or a combination of those factors, found in 40 CFR 131.10(g).

RESPONSE: The department finds the rule is sufficiently clear that a variance issued under NEW RULE I may be based on any of the federal factors listed at 40 CFR 131.10(g), or a combination thereof. Pursuant to NEW RULE I(2)(b), as part of necessary application materials, a permittee must identify the applicable factor or factors referenced at 40 CFR 131.14(b)(2)(i)(A)(1). Consistency with 40 CFR 131.14 is required by 75-5-320, MCA; the federal rule is adopted by reference in NEW RULE I and specifically contains a reference to the factors at 40 CFR 131.10(g).

COMMENT NO. 14: NEW RULE I(2)(j) should be rewritten to include the optimization study as a permit renewal condition once the permittee is operating under a variance, not as a precondition for applying for a variance.

RESPONSE: In order to receive a variance, a permittee must evaluate facility operations and infrastructure to maximize pollution reduction through an optimization study, and the variance must require the implementation of optimization study actions as terms and conditions of the discharge permit. See 75-5-320(2), MCA. No changes were made to the rule in response to this comment.

COMMENT NO. 15: NEW RULE I(2)(k)(iii) should be a subsection of (ii), not a stand-alone component.

RESPONSE: The department disagrees that the change is needed. The language of NEW RULE I and its structure mirrors federal rule language at 40 CFR

131.14(b)(1)(ii)(A), where three different types of discharger-specific variances are described.

COMMENT NO. 16: NEW RULE I(2)(k)(iii) should be rewritten to allow the pollutant minimization plan as a permit renewal condition once the permittee is operating under a variance, not as a precondition for applying for a variance.

RESPONSE: The pollutant minimization plan is an important component for evaluating a variance application and is a necessary component for discharger-specific variances that have already achieved the interim standards or effluent conditions set forth at NEW RULE I(2)(k)(i) and (2)(k)(ii), respectively. This approach is also consistent with the federal regulations where a "pollutant minimization program" must be part of any variance application operating under the subsection at 40 CFR 131.14(b)(1)(ii)(A)(3).

COMMENT NO. 17: The department should include adaptive management plans among the list of alternatives which would preclude the need for a variance, per NEW RULE I(3).

RESPONSE: In addressing stringent water quality standards, permittees must maintain flexibility to use the regulatory options available under state and federal law. Once the corresponding rules are adopted, adaptive management plans will be one of several options a permittee may pursue when working toward meeting nutrient standards. However, the department does not find it necessary to specifically exclude a permittee from receiving a nutrient standards variance, should the permittee choose to pursue a variance instead of an adaptive management plan.

COMMENT NO. 18: Section (10) should be rewritten to indicate the department will abide by the requirements found in other sections of the rule (specifically, (2), (3), (4), (5), (6), and (7)).

RESPONSE: As proposed, (10) already indicates that the department is subject to the procedures and requirements of NEW RULE I when issuing a variance upon its own volition.

COMMENT NO. 19: NEW RULE I(2)(k)(i) should provide a definition for the "highest attainable interim standard" so that it is consistent with federal language.

RESPONSE: The federal rule at 40 CFR 131.14(b)(1)(ii)(A)(1), adopted by reference in NEW RULE I, uses the term "highest attainable interim criterion." As used here, criterion and standard are interchangeable in meaning and therefore no additional state-level definition is needed.

COMMENT NO. 20: The proposed rule should specifically describe how economic and technical feasibility will be determined and evaluated by the department to justify the need for a temporary variance and associated interim permit limit.

RESPONSE: The department does not agree with the comment. Economic and technical feasibility/capability analyses associated with water quality standards variances are complicated analyses that do not readily lend themselves to description in rule. The intent of NEW RULE I is to set forth the criteria and

procedures for allowing temporary water quality standards variances for several recognized variance factors. For variances sought using the economic and social impact factor under NEW RULE I and 40 CFR 131.14, such impacts must be demonstrated during the application process, prior to the issuance of any variance. Following department approval, any variance must also be approved by EPA for federal Clean Water Act purposes. This subsection does not impair or otherwise limit the right of the permittee to assert the confidentiality of the information requested by the department, as provided in 75-2-105 , MCA.

COMMENT NO. 21: The rule requires that the variance will not lower water quality further, so the rule should require the assessment of water quality impacts downstream particularly on waterbodies that are not meeting their beneficial uses now.

RESPONSE: The rule will protect water quality because variances are allowed from yet-to-be-attained water quality standards and do not allow discharges that cause a lowering of currently attained ambient water quality (see 75-5-320(1)(a), MCA). The department also routinely assesses state surface waters, including waters where variances may be implemented. Once approved, a variance functions as a temporary water quality standard, without permanently removing the goal of attaining the underlying water quality standard, both near field and further downstream. The important aspects of a variance are that it is justified under one of the six authorized federal factors (see also, response to COMMENT NO. 13), it is temporary, and it must undergo periodic department and EPA review as to its justification.

COMMENT NO. 22: Properly evaluating many variance applications will be a lot of work for DEQ.

RESPONSE: Thank you for the comment. The department has considered and intends to meet the workload required to review and approve variance applications.

COMMENT NO. 23: Is there a review/decision deadline for DEQ after it receives a variance application? Timelines for department review of an application should be incorporated into the rule.

RESPONSE: There is no specific time requirement for the variance application review to be completed by the department. The department foresees some variances may be straightforward while other variances may require more time for review and approval. The department disagrees that a time limit for the preliminary approval process is appropriate. The rule already contains timelines for public review and comment as well as submission to EPA following final department approval. EPA is then subject to federal approval or disapproval periods for purposes of the federal Clean Water Act. To be finally effective, a variance must be incorporated into an MPDES permit. An MPDES permit is also subject to permitting review and public comment procedures at ARM Title 17, chapter 30, subchapter 13, including all related timelines.

COMMENT NO. 24: NEW RULE I(2)(i) should be re-written in clearer, less

confusing English, and the word "feasible: should be defined.

RESPONSE: The department does not find it necessary to define "feasible" at NEW RULE I(2)(i). The purpose of a definition is to achieve clarity without needless repetition. Feasible is an ordinary word and, as used in NEW RULE I, is intended to be understood in its ordinarily accepted meaning. The department also does not find it necessary to re-write the subsection; the wording contained at NEW RULE I(2)(i) is nearly verbatim from 75-5-320(1)(c)(ii), MCA, and best reflects statutory direction.

/s/ Angela Colamaria
ANGELA COLAMARIA
Rule Reviewer

/s/ Christopher Dorrington
CHRISTOPHER DORRINGTON
Director
Department of Environmental Quality

Certified to the Secretary of State September 27, 2022.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I through XX, amendment of ARM 37.27.101, 37.27.102, 37.27.105, 37.27.106, 37.27.107, 37.27.115, 37.27.116, 37.27.120, 37.27.902, 37.88.101, 37.106.1411, 37.106.1413, 37.106.1415, 37.106.1420, 37.106.1425, 37.106.1430, 37.106.1432, 37.106.1435, 37.106.1440, 37.106.1450, 37.106.1452, 37.106.1454, 37.106.1460, 37.106.1470, 37.106.1475, 37.106.1480, and 37.106.1485, and repeal of ARM 37.27.108, 37.27.121, 37.27.136, 37.27.137, 37.27.138, 37.106.1401, 37.106.1462, 37.106.1482, 37.106.1487, and 37.106.1491 pertaining to state approval of substance use disorder programs, licensure of substance use disorder facilities, and the Behavioral Health and Developmental Disability Medicaid & Non-Medicaid Manuals	)	CORRECTED NOTICE OF ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On August 5, 2022, the Department of Public Health and Human Services published MAR Notice No. 37-1010 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 1539 of the 2022 Montana Administrative Register, Issue Number 15. On September 23, 2022, the department published the notice of adoption, amendment, and repeal of the above-stated rules at page 1889 of the 2022 Montana Administrative Register, Issue Number 18.

2. Proposed NEW RULES XI and XIX were both assigned rule number ARM 37.106.1457 in the notice of adoption published on September 23, 2022. NEW RULE XIX is assigned rule number ARM 37.106.1458.

3. The rule, as adopted in corrected form, reads as follows, deleted matter interlined, new matter underlined:

NEW RULE XIX (37.106.~~1457~~1458) COMMUNICABLE DISEASE CONTROL

(1) through (4) remain as adopted.

4. The replacement pages for this corrected notice were submitted to the Secretary of State on September 30, 2022.

/s/ FLINT MURFITT
Flint Murfitt
Rule Reviewer

/s/ CHARLES T. BRERETON
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State September 27, 2022.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.39.310 pertaining to a waste management process revision	)))	CORRECTED NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On August 5, 2022, the Department of Revenue published MAR Notice No. 42-1060 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1648 of the 2022 Montana Administrative Register, Issue Number 15. On September 23, 2022, the department published the notice of amendment at page 1945 of the 2022 Montana Administrative Register, Issue Number 18.

2. The first sentence of ARM 42.39.310(10) which the department amended upon adoption based on comments contains two minor typographical inconsistencies which require correction. The rule, as amended in corrected form, reads as follows, deleted matter interlined, new matter underlined:

42.39.310 WASTE MANAGEMENT (1) through (9) remain as adopted.

(10) After the expiration of the 72-hour period in (9), a licensee may dispose of marijuana waste other than usable marijuana as defined in 16-12-102 , MCA, without rendering it unusable pursuant to (3) by releasing ~~them~~ it to a third-party contractor to render ~~them~~ it unusable. A licensee must provide the department with a copy of the waste removal agreement with the third-party contractor before commencing services and must maintain the contract in the binder of documents required by ARM 42.39.105(6). The third-party contractor may process marijuana stalks and stems into non-marijuana products or otherwise render the marijuana stalks and stems unusable.

AUTH: 16-12-112, MCA
IMP: 16-12-103, 16-12-105, 16-12-112, 16-12-203, 16-12-210, MCA

3. The replacement pages for this corrected notice were submitted to the Secretary of State on September 30, 2022.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ David R. Stewart for
Brendan Beatty
Director of Revenue

Certified to the Secretary of State September 27, 2022.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEES

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee

- Department of Agriculture
- Department of Commerce
- Department of Labor and Industry
- Department of Livestock
- Office of the State Auditor (Commissioner of Securities and Insurance)
- Office of Economic Development
- Division of Banking and Financial Institutions
- Alcoholic Beverage Control Division
- Cannabis Control Division

Education Interim Committee

- State Board of Education
- Board of Public Education
- Board of Regents of Higher Education
- Office of Public Instruction
- Montana Historical Society
- Montana State Library

Children, Families, Health, and Human Services Interim Committee

- Department of Public Health and Human Services

Law and Justice Interim Committee

- Department of Corrections
- Department of Justice

Energy and Telecommunications Interim Committee

- Department of Public Service Regulation.

Revenue Interim Committee

- Department of Revenue
- Montana Tax Appeal Board

State Administration and Veterans' Affairs Interim Committee

- Department of Administration
- Montana Public Employee Retirement Administration
- Board of Investments
- Department of Military Affairs
- Office of the Secretary of State
- Office of the Commissioner of Political Practices

Transportation Interim Committee

- Department of Transportation
- Motor Vehicle Division (Department of Justice)

Environmental Quality Council

- Department of Environmental Quality
- Department of Fish, Wildlife and Parks
- Department of Natural Resources and Conservation

Water Policy Interim Committee (where the primary concern is the quality or quantity of water)

- Department of Environmental Quality
- Department of Fish, Wildlife and Parks
- Department of Natural Resources and Conservation

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions:

Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR or Register) is an online publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding Register.

Use of the Administrative Rules of Montana (ARM):

Known Subject

1. Consult ARM Topical Index.
   Update the rule by checking recent rulemaking and the table of contents in the last Montana Administrative Register issued.

Statute

2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.

RECENT RULEMAKING BY AGENCY

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 2022. This table includes notices in which those rules adopted during the period March 25, 2022, through September 9, 2022, occurred and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 2022, this table, and the table of contents of this issue of the Register.

This table indicates the department name, title number, notice numbers in ascending order, the subject matter of the notice, and the page number(s) at which the notice is published in the 2022 Montana Administrative Register.

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